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User's Guide

In order to assist both the legal profession and the layman in obtaining the maximum benefit from the Mississippi Code of 1972 Annotated, a User's Guide has been included in the main volume. This guide contains comments and information on the many features found within the Code intended to increase the usefulness of the Code to the user.

PUBLISHER'S FOREWORD

Statutes

The 2020 Supplement to the Mississippi Code of 1972 Annotated reflects the statute law of Mississippi as amended by the Mississippi Legislature through the end of the 2020 Regular Legislative Session.

Annotations

Case annotations are included based on decisions of the State and federal courts in cases arising in Mississippi. Annotations to collateral research references are also included.

To better serve our customers by making our annotations more current, LexisNexis has changed the sources that are read to create annotations for this publication. Rather than waiting for cases to appear in printed reporters, we now read court decisions as they are released by the courts. A consequence of this more current reading of cases, as they are posted online on LexisNexis, is that the most recent cases annotated may not yet have print reporter citations. These will be provided, as they become available, through later publications.

This publication contains annotations taken from decisions of the Mississippi Supreme Court and the Court of Appeals and decisions of the appropriate federal courts. These cases will be printed in the following reporters:

Southern Reporter, 3rd Series
United States Supreme Court Reports
Supreme Court Reporter
United States Supreme Court Reports, Lawyers' Edition, 2nd Series
Federal Reporter, 3rd Series
Federal Supplement, 3rd Series
Federal Rules Decisions
Bankruptcy Reporter

Additionally, annotations have been taken from the following sources:

American Law Reports, 6th Series
American Law Reports, Federal 2nd
Mississippi College Law Review
Mississippi Law Journal

Finally, published opinions of the Attorney General and opinions of the Ethics Commission have been examined for annotations.

Amendment Notes

Amendment notes detail how the new legislation affects existing sections.

Editor's Notes

Editor's notes summarize subject matter and legislative history of repealed sections, provide information as to portions of legislative acts that have not been codified, or explain other pertinent information.

Joint Legislative Committee Notes

Joint Legislative Committee notes explain codification decisions and corrections of Code errors made by the Mississippi Joint Legislative Committee on Compilation, Revision, and Publication of Legislation.

Tables

The Statutory Tables volume adds tables showing disposition of legislative acts through the 2020 Regular Session.

Index

The comprehensive Index to the Mississippi Code of 1972 Annotated is replaced annually, and we welcome customer suggestions. The foreword to the Index explains our indexing principles, suggests guidelines for successful index research, and provides methods for contacting indexers.

Acknowledgements

The publisher wishes to acknowledge the cooperation and assistance rendered by the Mississippi Joint Legislative Committee on Compilation, Revision, and Publication of Legislation, as well as the offices of the Attorney General and Secretary of State, in the preparation of this supplement.

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December 2020 LexisNexis

SCHEDULE OF NEW SECTIONS

Added in this Supplement

TITLE 71. LABOR AND INDUSTRY

CHAPTER 5. Unemployment Compensation

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71-5-116. Annual report tracking data from contractors to be used to improve workforce training programs.

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CHAPTER 13. Prohibition Against Employer Intimidation Act

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Technological Feasibility as Factor Affecting Validity of, or Obligation of Compliance with, Standards Established Under Occupational Safety and Health Act (29 U.S.C. § 651 et seq.). 72 A.L.R. Fed. 2d 461.

§ 71-1-47. Denial or abridgment of work.

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2. Federal preemption.

National Labor Relations Act does not allow Mississippi to prohibit unions from requiring non-union members to pay a hiring hall fee; Mississippi's right to work law is therefore preempted by federal law to the extent that it prohibits non-union members from being required to pay hiring hall fees. Simms v. Local 1752, Int'l Longshoremen Ass'n, 838 F.3d 613, 2016 U.S. App. LEXIS 17679 (5th Cir. Miss. 2016).

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WORKERS' COMPENSATION

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GENERAL PROVISIONS

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§ 71-3-1. Citation; purpose; construction.

(1) This chapter shall be known and cited as "Workers' Compensation Law," and shall be administered by the Workers' Compensation Commission, hereinafter referred to as the "commission," cooperating with other state and federal authorities for the prevention of injuries and occupational diseases to workers and, in event of injury or occupational disease, their rehabilitation or restoration to health and vocational opportunity; and this chapter shall be fairly and impartially construed and applied according to the law and the evidence in the record, and, notwithstanding any common law or case law to the contrary, this chapter shall not be presumed to favor one party over another and shall not be liberally construed in order to fulfill any beneficent purposes.

(2) Wherever used in this chapter, or in any other statute or rule or regulation affecting the former Workmen's Compensation Law and any of its functions or duties:

(a) The words "workmen's compensation" shall mean "workers' compensation"; and

(b) The word "commission" shall mean the Workers' Compensation Commission.

(3) The primary purposes of the Workers' Compensation Law are to pay timely temporary and permanent disability benefits to every worker who legitimately suffers a work-related injury or occupational disease arising out of and in the course of his employment, to pay reasonable and necessary medical expenses resulting from the work-related injury or occupational disease, and to encourage the return to work of the worker.

HISTORY: Codes, 1942, § 6998-01; Laws, 1948, ch. 354, § 1; Laws, 1960, ch. 275; Laws, 1968, ch. 559, § 1; reenacted without change, Laws, 1982, ch. 473, § 1; Laws, 1984, ch. 408; reenacted without change, Laws, 1990, ch. 405, § 1; Laws, 2012, ch. 522, § 1, eff from and after July 1, 2012.

Editor's Notes — Laws of 2012, ch. 522, §§ 10 and 11, provide:

"SECTION 10. The Workers' Compensation Commission shall promulgate a written statement specifying the changes made to the Workers' Compensation Law by this act to every employer in this state subject to the Workers' Compensation Law. Within ten (10) days of receipt of this written statement from the Commission, every employer shall post the Commission's statement in a conspicuous place or places in and about his place or places of business and adjacent to the Notice of Coverage as required by Section 71-3-81.

"SECTION 11. This act shall take effect and be in force from and after July 1, 2012, and shall apply to injuries occurring on or after July 1, 2012."

Amendment Notes — The 2012 amendment rewrote (1) and added (3).

JUDICIAL DECISIONS

ANALYSIS

3. Construction.
4. —Causal connection.
12. Temporary total disability.

3. Construction.

4. —Causal connection.

Mississippi Workers' Compensation Commission's decision that a worker suffered an accidental injury, pursuant to Miss. Code Ann. § 71-3-3(b), within the course and scope of the worker's employment, pursuant to Miss. Code Ann. § 71-3-1(3), was not contrary to the overwhelming weight of the evidence because, although no one saw the worker pick a tire up and injure the worker's back, the worker informed the worker's supervisor immediately following the injury, and the supervisor testified that the worker emerged from beneath a van, stood up, and stated that the worker's back was bothering the worker. The only contradictory evidence presented was by the store manager, who claimed that the worker never said that the worker hurt the worker's back; however, the manager did admit that the worker complained of the worker's back hurting, and the administrative judge found that the testimony of the worker was definitely more credible than that of the store manager. Performance Tire & Wheel, Inc. v. Rhoads, 113 So. 3d 1262, 2013 Miss. App. LEXIS 195 (Miss. Ct. App. 2013).

12. Temporary total disability.

Temporary total disability award for six weeks and permanent partial disability award for 50 weeks and a finding that an employee reached maximum medical improvement on April 2, 1998, under Miss. Code Ann. § 71-3-1, based upon the testimony of a hand specialist and his release of the claimant the next day to return to work, even though he continued to treat the claimant, was proper. Allegrezza v. Greenville Mfg. Co., 122 So. 3d 755, 2012 Miss. App. LEXIS 594 (Miss. Ct. App. 2012), aff'd, 122 So. 3d 719, 2013 Miss. LEXIS 474 (Miss. 2013).

Mississippi Workers' Compensation Commission properly found that a claimant was not permanently and totally disabled due to a back injury as the plant had been closed for years before the hearing, and a physical therapist testified that with proper safety techniques, the claimant could perform all aspects of the job assigned to her by the employer. Allegrezza v. Greenville Mfg. Co., 122 So. 3d 755, 2012 Miss. App. LEXIS 594 (Miss. Ct. App. 2012), aff'd, 122 So. 3d 719, 2013 Miss. LEXIS 474 (Miss. 2013).

§ 71-3-3. Definitions.

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17. Disability.

Workers Compensation Commission, on remand, erred in holding that an employee successfully rebutted the presumption that she was entitled to no permanent disability as a result of her brief return to accommodated employment because the employee returned to work at the employer full-time with the same job duties and expectations as before and with no accommodations for over seven months, neither the employee's for-cause termination nor her lack of a more advanced degree related to any incapacity to earn wages "because of injury," and the employee failed to present substantial evidence to rebut the presumption that she sustained no loss of wage-earning capacity. Hudspeth Reg'l Ctr. v. Mitchell, — So. 3d —, 2019 Miss. App. LEXIS 179 (Miss. Ct. App. Apr. 30, 2019), cert. denied, 283 So. 3d 734, 2019 Miss. LEXIS 426 (Miss. 2019), cert. denied, — So. 3d —, 2019 Miss. LEXIS 465 (Miss. 2019).

Employee's wage-earning capacity was properly calculated because an administrative judge (1) weighed a vocational expert's testimony and (2) did not equate the employee's loss of wage-earning capacity with loss of access to the labor market. Itta Bena Plantation III & Benchmark Ins. Co. v. Gates, 282 So. 3d 721, 2019 Miss. App. LEXIS 384 (Miss. Ct. App. 2019).

Claimant for workers' compensation benefits was not entitled to permanent partial disability benefits because the claimant did not suffer a loss of wage-earning capacity as the claimant admitted that the claimant returned to work at the same plant, in the same division, and in the same job but making a higher wage. Pruitt v. Howard Indus., 232 So. 3d 822, 2017 Miss. App. LEXIS 672 (Miss. Ct. App. 2017).

Employer failed to rebut the testimony, the employee's work restrictions, or any medical evidence to overcome the employee's prima facie case of permanent-partial disability from the time of his layoff in 2008 to the present; as the employee proved a work-related injury, a loss of wage-earning capacity resulting in permanent-partial disability, and that the injury related to his disability, the order denying his claim for benefits was reversed. Ladner v. Zachry Constr., 225 So. 3d 580, 2016 Miss. App. LEXIS 473 (Miss. Ct. App. 2016), op. withdrawn, sub. op., — So. 3d —, 2017 Miss. App. LEXIS 528 (Miss. Ct. App. 2017).

Mississippi Workers' Compensation Commission did not err in finding that an employee failed to prove she suffered a permanent disability because the presumption of no loss of wage-earning capacity applied since her post-injury wages were the same as her pre-injury wages; the employee failed to rebut the presumption because she presented no evidence of an increase in wage levels since her injury, that she was working additional hours, or that she was being paid out of her employer's sympathy. Weathersby v. Miss. Baptist Health Sys., 195 So. 3d 877, 2016 Miss. App. LEXIS 421 (Miss. Ct. App. 2016).

Workers' compensation benefits claimant was permanently and totally disabled because an employer refused to rehire the claimant within his restrictions, and the employer did not offer the claimant work in the time period between the restrictions and the date of his termination for allegedly falsifying his original employment application; moreover, the claimant made a valid, but unsuccessful, job search within his restrictions of both sedentary

and light work. The claimant's age, education, permanent work restrictions, geographical location, past work experience, inability to return to past employment, loss of access to the job market, and his lack of computer, clerical, or sales experience were all considered. Howard Indus. v. Satcher, 183 So. 3d 907, 2016 Miss. App. LEXIS 1 (Miss. Ct. App. 2016).

ALJ's finding that the claimant was disabled was supported by evidence she was unable to find employment and earn the same wages as before the injury. Hudspeth Reg'l Ctr. v. Mitchell, 202 So. 3d 617, 2015 Miss. App. LEXIS 511 (Miss. Ct. App. 2015), rev'd, 202 So. 3d 609, 2016 Miss. LEXIS 438 (Miss. 2016).

Workers' Compensation Commission erred in denying a former employee benefits for a permanent and total disability. The testimony from the employee's vocational specialist indicated that the employee had a 100% loss in the labor market, and the testimony of the opposing vocational expert showed that the employee should, at the very least, have been assess a loss of wage-earning capacity. Logan v. Klaussner Furniture Corp., 127 So. 3d 1138, 2013 Miss. App. LEXIS 319 (Miss. Ct. App. 2013), cert. denied, 2014 Miss. LEXIS 11 (Miss. Jan. 9, 2014).

Where both of a workers' compensation claimant's doctors testified that the claimant's injuries were consistent with the injury that the claimant described wherein a patient fell onto the claimant's shoulder and the claimant's back popped, the claimant's resulting disability, defined under Miss. Code Ann. § 71-3-3(i), was compensable because it was work-related under Miss. Code Ann. § 71-3-7. Lang v. Miss. Baptist Med. Ctr., 53 So. 3d 814, 2010 Miss. App. LEXIS 588 (Miss. Ct. App. 2010).

Award of permanent disability benefits was affirmed because substantial evidence supported an administrative judge's finding that an employee sustained a 75 percent loss of wage-earning capacity due to a work-related injury to the employees' back, which rendered the employee disabled under Miss. Code Ann. § 71-3-3(i). Furthermore, a doctor told the employee to limit the employee's bending, lifting, stooping, and climbing, and the employee made a credible search for work after the employee reached maximum medical improvement, but potential employers rebuffed the employee. Harrison County Bd. of Supervisors v. Black, 127 So. 3d 272, 2013 Miss. App. LEXIS 148 (Miss. Ct. App.), cert. denied, 127 So. 3d 1115, 2013 Miss. LEXIS 663 (Miss. 2013).

Evidence supported the workers' compensation commission's finding that an employee had sustained a fifty percent loss of wage-earning capacity and the award of temporary total disability benefits as the record showed that, while the employee presented to the employer for re-hire after his original injury, his post-injury condition progressively worsened, ultimately resulting in his retirement; however, as acknowledged by the commission, the employee failed to seek alternative work positions from the employer before retiring, even though he had the capacity to perform alternative duties. Durbin v. Brown, 178 So. 3d 789, 2013 Miss. App. LEXIS 166 (Miss. Ct. App. 2013).

Mississippi Workers' Compensation Commission's finding that there was no loss of wage-earning capacity was supported by substantial evidence because the evidence showed that the claimant could have returned to the claimant's previous job had there been a job available, and that the claimant could have found employment earning the same amount of pre-injury income. Whiddon v. Southern Concrete Pumping, LLC, 114 So. 3d 18, 2013 Miss. App. LEXIS 208 (Miss. Ct. App. 2013).

Denial of permanent partial disability benefits to the employee in a workers' compensation action was improper because his post-injury income would have been higher but for a climbing restriction and therefore, the Workers' Compensation Commission erred by finding that the injury had no impact on his wage-earning potential, Miss. Code Ann. § 71-3-3(i). Gregg v. Natchez Trace Elec. Power Ass'n, 64 So. 3d 473, 2011 Miss. LEXIS 280 (Miss. 2011).

Where a workers' compensation claimant was released to work with a 10 percent disability rating and a climbing restriction, as his post-injury earnings

exceeded his pre-injury earnings, the record indicated that his employer accommodated him as a matter of policy, not generosity, and as his testimony failed to show that he could not earn overtime pay or perform his job duties with his climbing restriction, he failed to present sufficient evidence to rebut the presumption of no loss of wage-earning capacity. Gregg v. Natchez Trace Elec. Power Ass'n, 64 So. 3d 489, 2010 Miss. App. LEXIS 289 (Miss. Ct. App. 2010), rev'd, 64 So. 3d 473, 2011 Miss. LEXIS 280 (Miss. 2011).

Substantial evidence supported the ruling of the Mississippi Workers' Compensation Commission to affirm an administrative law judge's (ALJ) decision awarding an employee permanent partial disability benefits of $ 15 per week for 450 weeks because the employee made it clear during his testimony that he chose to stay at home and not seek employment, and the ALJ determined that the employee's decision did not alleviate his duty to seek employment; the ALJ ultimately found that the employee had not satisfied his burden of seeking alternative employment and found that the evidence did support some loss of wage-earning capacity. Lopez v. Zachry Constr. Corp., 22 So. 3d 1235, 2009 Miss. App. LEXIS 767 (Miss. Ct. App. 2009).

18. Employee, generally.

Mississippi Workers' Compensation Commission erred by declaring that a claimant's permanent total disability benefits related back to the date of injury, as he was not "disabled" on that date because he was able to continue to work thereafter. Eaton Corp. v. Brown, 130 So. 3d 1131, 2013 Miss. App. LEXIS 344 (Miss. Ct. App. 2013), cert. denied, 131 So. 3d 578, 2014 Miss. LEXIS 80 (Miss. 2014).

Finding in favor of the employee in a workers' compensation action was appropriate because a contract of hire existed and the employee met the statutory definition of "employee" for workers' compensation purposes under Miss. Code Ann. § 71-3-3(d) (Rev. 2000). Hugh Dancy Co. v. Mooneyham, 68 So. 3d 76, 2011 Miss. App. LEXIS 74 (Miss. Ct. App.), cert. denied, 69 So. 3d 9, 2011 Miss. LEXIS 401 (Miss. 2011).

19. — Burden of proof.

Denial of a workers' compensation claim was appropriate because, considering the inconsistencies in the claimant's testimony, the inconsistencies in the claimant's reported medical history, the extended period of time between the claimant's alleged injury and the claimant's report of a work-related injury, and the conflicting medical testimony, the claimant failed to carry the claimant's burden of proof as to causation. Price v. MTD Prods. & Safety Nat'l Cas. Corp., 242 So. 3d 900, 2017 Miss. App. LEXIS 552 (Miss. Ct. App. 2017), cert. denied, 246 So. 3d 68, 2018 Miss. LEXIS 227 (Miss. 2018).

20. — Factors.

Circuit court properly granted a company summary judgment in a worker's action alleging it was liable for its employee's negligence because his exclusive remedy was under the Workers' Compensation Law; the nature of the work was that of an employee covered by the Law because the work did not involve any particular skill or training, and the worker was not in the business of offering similar services to other entities as part of his own independent business. Fortner v. Specialty Contr., LLC, 217 So. 3d 736, 2017 Miss. App. LEXIS 54 (Miss. Ct. App. 2017).

Worker's exclusive remedy was under the Workers' Compensation Law because pursuant to the "control test," the worker was a company's employee not an independent contractor; the company had the right to control the work and it exercised that right, the worker was paid a regular daily wage rather than a fixed fee for some project or job, and the company provided all necessary tools and could have fired him at any time. Fortner v. Specialty Contr., LLC, 217 So. 3d 736, 2017 Miss. App. LEXIS 54 (Miss. Ct. App. 2017).

Mississippi Workers' Compensation Commission did not err in granting a job applicant benefits for an injury he sustained while performing a pre-employment job-function test because there was substantial evidence he was an employee at the time of his injury under an implied contract for hire; the evidence was suffi-

cient to show there was mutual consent for hire and sufficient consideration for a contract for hire, and the employer controlled the applicant's actions in performing the test. Averitt Express, Inc. v. Collins, 172 So. 3d 1252, 2015 Miss. App. LEXIS 384 (Miss. Ct. App. 2015).

Mississippi Workers' Compensation Commission properly ordered an employer to pay a worker benefits because the substantial evidence supported a finding that it employed the worker as an employee, rather than an independent contractor; the Commission found that the factor of the right of control weighed in favor of treating the worker as an employee because the employer required him to work every day,and he exclusively worked for the employer. Southeastern Auto Brokers v. Graves, 210 So. 3d 1012, 2015 Miss. App. LEXIS 205 (Miss. Ct. App. 2015).

21. — Independent contractor.

Claimant for unemployment benefits was not an employee of a paramedical company, pursuant to Miss. Code Ann. § 71-5-11, because (1) the written agreement between the parties did not constitute an enforceable contract, much less an enforceable employment contract; and (2) the claimant, who was a phlebotomist or paramedical examiner that performed medical-testing services on applicants for insurance policies pursuant to optional work orders, was an independent contractor, under Miss. Code Ann. § 71-3-3(r). MEDS, Inc. v. Miss. Dep't of Empl. Sec., 130 So. 3d 148, 2014 Miss. App. LEXIS 13 (Miss. Ct. App. 2014).

Record failed to support the conclusion of the Mississippi Department of Employment Security that a worker constituted an employee under Miss. Code Ann. § 71-5-11(J)(14) because the worker constituted an independent contractor; the worker set his own hours and received a commission, not an hourly wage, and the employer failed to exercise control, nor did it possess a right of control, over the details of the actual sales work at issue. College Network v. Miss. Dep't of Empl. Sec., 114 So. 3d 740, 2013 Miss. App. LEXIS 179 (Miss. Ct. App. 2013).

22. — Particular persons.

County's workers' compensation insurance did not cover medical expenses incurred when a county inmate was injured while working in a county work program because the inmate was not working for the county under a contract of hire, and thus, he was not an employee under the Mississippi Workers' Compensation Act, Miss. Code Ann. § 71-3-3. Vuncannon v. United States, 711 F.3d 536, 2013 U.S. App. LEXIS 5284 (5th Cir. Miss. 2013).

23. Injury, generally.

26. — Other particular causes of injuries.

Mississippi Workers' Compensation Commission did not err in reversing the administrative judge's determination that the claimant was acting in the scope of his employment when he rode toward his house after lunch to switch from his motorcycle to his jeep before returning to his office because he was on a personal errand to exchange vehicles unconnected to a business purpose for his employer; he had a fixed place of employment; while aspects of his work included travel to service locations, and he was entitled to reimbursement for that travel, his position was not comparable to that of a truck driver or traveling salesman; and travel to lunch and his personal errand home to exchange vehicles were outside the scope of his employment. Bennett v. Miss. State Dep't of Health, 211 So. 3d 773, 2016 Miss. App. LEXIS 474 (Miss. Ct. App. 2016).

Substantial evidence supported the Workers' Compensation Commission's award of benefits because the evidence showed (1) travel was a large part of the employee's work, and (2) the employee was returning home from such travel engaged in to perform work for an employer when the employee was injured in an accident. Choctaw Resort Dev. Enter. v. Applequist, 161 So. 3d 1134, 2015 Miss. App. LEXIS 214 (Miss. Ct. App. 2015).

27. — Mental injuries.

Denial of workers' compensation benefits for an alleged disabling mental disability was appropriate because the employee failed to present any medical evidence establishing a causal connection between her employment and the alleged

injury while the employer's expert testified that his evaluation of the employee indicated that the employee did not suffer any work-related injury. Lacy v. Jackson State Univ., 120 So. 3d 1044, 2013 Miss. App. LEXIS 549 (Miss. Ct. App. 2013).

30. — Proof of injuries.

Mississippi Workers' Compensation Commission erred in overturning an administrative law judge's ruling that an employer owed an employee disability payments because the employee proved a work-related injury, he suffered a loss of wage-earning capacity resulting in permanent-partial disability, and the injury related to his disability; the employer failed to rebut the employee's prima facie case of disability. Ladner v. Zachry Constr., — So. 3d —, 2017 Miss. App. LEXIS 528 (Miss. Ct. App. Sept. 5, 2017).

Workers' Compensation Commission properly affirmed the denial of benefits to an employee because the employee did not seek medical treatment for a month after developing knee pain, told a nurse at the hospital that he had injured his knee while running and denied any work-related injury, and the medical testimony was insufficient to establish a work-related injury. Johnson v. Sysco Food Servs., 122 So. 3d 159, 2013 Miss. App. LEXIS 628 (Miss. Ct. App. 2013).

Mississippi Workers' Compensation Commission's decision that a worker suffered an accidental injury, pursuant to Miss. Code Ann. § 71-3-3(b), within the course and scope of the worker's employment, pursuant to Miss. Code Ann. § 71-3-1(3), was not contrary to the overwhelming weight of the evidence because, although no one saw the worker pick a tire up and injure the worker's back, the worker informed the worker's supervisor immediately following the injury, and the supervisor testified that the worker emerged from beneath a van, stood up, and stated that the worker's back was bothering the worker. The only contradictory evidence presented was by the store manager, who claimed that the worker never said that the worker hurt the worker's back; however, the manager did admit that the worker complained of the worker's back hurting, and the administrative judge found that the testimony of the worker was definitely more credible than that of the store manager. Performance Tire & Wheel, Inc. v. Rhoads, 113 So. 3d 1262, 2013 Miss. App. LEXIS 195 (Miss. Ct. App. 2013).

31. Going and coming rule.

Under an exception to the coming-and-going rule, the Mississippi Workers' Compensation Commission did not err in reversing the administrative judge's determination that the claimant was acting in the scope of his employment when he rode toward his house after lunch to switch from his motorcycle to his jeep before returning to his office because, while fulfilling certain work orders required the use of an enclosed vehicle to transport equipment, the claimant made a personal decision to transfer vehicles, and the trip home was not necessary to facilitate his scheduled work assignments; and the claimant himself testified that his original plan was to drive straight from lunch to his office. Bennett v. Miss. State Dep't of Health, 211 So. 3d 773, 2016 Miss. App. LEXIS 474 (Miss. Ct. App. 2016).

Under an exception to the coming-and-going rule, the Mississippi Workers' Compensation Commission did not err in reversing the administrative judge's determination that the claimant was acting in the scope of his employment when he rode toward his house after lunch to switch from his motorcycle to his jeep before returning to his office because, while the claimant was eligible for reimbursement for mileage incurred driving from his office to a work site, or from a work site to his office, he conceded that he would not be entitled to seek reimbursement for driving to lunch or for mileage on a personal errand between service calls. Bennett v. Miss. State Dep't of Health, 211 So. 3d 773, 2016 Miss. App. LEXIS 474 (Miss. Ct. App. 2016).

RESEARCH REFERENCES

ALR.

Right to Workers' Compensation for Physical Injury or Illness Suffered by Claimant as Result of Sudden Mental Stimuli – Compensability of Particular Injuries and Illnesses. 20 A.L.R.6th 641.

Recovery of Workers' Compensation for Acts of Terrorism. 20 A.L.R. 6th 729.

§ 71-3-5. Application.

JUDICIAL DECISIONS

ANALYSIS

1. In general.
6. — Maritime employment.
9. Liability for coverage.

1. In general.

Workers' Compensation Act applied to an employer because it had at least five employees at the time of a workers' injury; there was no evidence that any of the employer's officers had elected to opt out of coverage in writing, and thus, they acted as employees and counted as employees for coverage purposes. Southeastern Auto Brokers v. Graves, 210 So. 3d 1012, 2015 Miss. App. LEXIS 205 (Miss. Ct. App. 2015).

6. — Maritime employment.

Workers' Compensation Commission properly dismissed an employee's claim for benefits because the Workers' Compensation Act excluded transportation and maritime employments for which a rule of liability was provided by the law of the United States, the employee was engaged in maritime employment at that time of his injury, and he had accepted benefits under the Longshore and Harbor Workers' Compensation Act. Kimbrough v. Fowler's Pressure Washing, LLC, 170 So. 3d 609, 2015 Miss. App. LEXIS 116 (Miss. Ct. App.), cert. denied, 168 So. 3d 962, 2015 Miss. LEXIS 401 (Miss. 2015).

9. Liability for coverage.

Workers' Compensation Commission properly found that a decedent's fatal stroke was a compensable injury and that the accounting firm was obligated to provide workers' compensation benefits to the decedent's beneficiaries because the firm was required to obtain workers' compensation insurance and provide workers' compensation benefits to its employees where it had more than five employees, nothing in the record indicated that the firm provided any written notice that it was electing to exempt the decedent from coverage, and there was no evidence in the record that the decedent's stress, stroke, and death were caused by anything other than his professional life. Harper v. Banks, Finley, White & Co. of Miss., P.C., 167 So. 3d 1155, 2015 Miss. LEXIS 350 (Miss. 2015).

RESEARCH REFERENCES

ALR.

Applicability under 29 CFR 1918.2 of Safety and Health Regulations for Longshoring to actions against ship owners pursuant to 33 USCS § 905(b) of the Longshoremen's and Harbor Workers' Compensation Act amendment of 1972. 56 A.L.R. Fed. 812.

Construction and Application of Longshore and Harbor Workers' Compensation Act (LHWCA) – Supreme Court Cases. 72 A.L.R. Fed. 2d 1.

§ 71-3-7. Liability for payment of compensation.

(1) Compensation shall be payable for disability or death of an employee from injury or occupational disease arising out of and in the course of

employment, without regard to fault as to the cause of the injury or occupational disease. An occupational disease shall be deemed to arise out of and in the course of employment when there is evidence that there is a direct causal connection between the work performed and the occupational disease. In all claims in which no benefits, including disability, death and medical benefits, have been paid, the claimant shall file medical records in support of his claim for benefits when filing a petition to controvert. If the claimant is unable to file the medical records in support of his claim for benefits at the time of filing the petition to controvert because of a limitation of time established by Section 71-3-35 or Section 71-3-53, the claimant shall file medical records in support of his claim within sixty (60) days after filing the petition to controvert.

(2) Where a preexisting physical handicap, disease, or lesion is shown by medical findings to be a material contributing factor in the results following injury, the compensation which, but for this subsection, would be payable shall be reduced by that proportion which such preexisting physical handicap, disease, or lesion contributed to the production of the results following the injury. The preexisting condition does not have to be occupationally disabling for this apportionment to apply.

(3) The following provisions shall apply to subsections (1) and (2) of this section:

(a) Apportionment shall not be applied until the claimant has reached maximum medical recovery.

(b) The employer or carrier does not have the power to determine the date of maximum medical recovery or percentage of apportionment. This must be done by the attorney-referee, subject to review by the commission as the ultimate finder of fact.

(c) After the date the claimant reaches maximum medical recovery, weekly compensation benefits and maximum recovery shall be reduced by that proportion which the preexisting physical handicap, disease, or lesion contributes to the results following injury.

(d) If maximum medical recovery has occurred before the hearing and order of the attorney-referee, credit for excess payments shall be allowed in future payments. Such allowances and method of accomplishment of the same shall be determined by the attorney-referee, subject to review by the commission. However, no actual repayment of such excess shall be made to the employer or carrier.

(4) No compensation shall be payable if the use of drugs illegally, or the use of a valid prescription medication(s) taken contrary to the prescriber's instructions and/or contrary to label warnings, or intoxication due to the use of alcohol of the employee was the proximate cause of the injury, or if it was the willful intention of the employee to injure or kill himself or another.

(5) Every employer to whom this chapter applies shall be liable for and shall secure the payment to his employees of the compensation payable under its provisions.

(6) In the case of an employer who is a subcontractor, the contractor shall be liable for and shall secure the payment of such compensation to employees of the subcontractor, unless the subcontractor has secured such payment.

HISTORY: Codes, 1942, § 6998-04; Laws, 1948, ch. 354, § 4; Laws, 1950, ch. 412, § 3; Laws, 1958, ch. 454, § 1; Laws, 1960, ch. 277; Laws, 1968, ch. 559, § 3; reenacted without change, Laws, 1982, ch. 473, § 4; reenacted without change, Laws, 1990, ch. 405, § 4; Laws, 2012, ch. 522, § 2, eff from and after July 1, 2012.

Editor's Notes — Laws of 2012, ch. 522, §§ 10 and 11, provide:

"SECTION 10. The Workers' Compensation Commission shall promulgate a written statement specifying the changes made to the Workers' Compensation Law by this act to every employer in this state subject to the Workers' Compensation Law. Within ten (10) days of receipt of this written statement from the Commission, every employer shall post the Commission's statement in a conspicuous place or places in and about his place or places of business and adjacent to the Notice of Coverage as required by Section 71-3-81.

"SECTION 11. This act shall take effect and be in force from and after July 1, 2012, and shall apply to injuries occurring on or after July 1, 2012."

Amendment Notes — The 2012 amendment inserted subsection (1) through (6) designators; added the last two sentences in (1); added the last sentence in (2); added the introductory paragraph in (3); rewrote (4); and made a minor stylistic change.

JUDICIAL DECISIONS

ANALYSIS

7. Injury arising out of and during course of employment, generally.
10. —Going to or returning from work.
11. — —Injury compensable.
15. —Proof of claim.
17. — — Benefits denied.
18. Accidental injury or death.
20. —Not entitled to benefits.
30. Pre-existing disease or infirmity.
34. —Apportionment.
36. — — Not required.
37. Deviation from employment or duties.
38. Injury from assault or other intentional acts.
41. Intoxication.
43. Liability of contractors and subcontractors.
48. Immunity.
49. Wage-earning potential.

7. Injury arising out of and during course of employment, generally.

Where both of a workers' compensation claimant's doctors testified that the claimant's injuries were consistent with the injury that the claimant described wherein a patient fell onto the claimant's shoulder and the claimant's back popped, the claimant's resulting disability, defined under Miss. Code Ann. § 71-3-3(i), was compensable because it was work-related under Miss. Code Ann. § 71-3-7. Lang v. Miss. Baptist Med. Ctr., 53 So. 3d 814, 2010 Miss. App. LEXIS 588 (Miss. Ct. App. 2010).

10. —Going to or returning from work.

The general rule is that the hazards encountered by employees while going to or returning from their regular place of work and off their employer's premises are not an incident to employment and accidents arising therefrom are not compensable, and an employee who claims an exception to this general rule has the burden of proving he comes within one of the exceptions. Aetna Finance Co. v. Bourgoin, 252 Miss. 852, 174 So. 2d 495, 1965 Miss. LEXIS 1154 (Miss. 1965).

Generally, injuries received in going to or returning from work are not "in the course of employment". Scott Builders, Inc. v. Dependent of Layton, 244 Miss. 641, 145 So. 2d 165, 1962 Miss. LEXIS 490 (Miss. 1962).

11. — —Injury compensable.

Worker's travel had a substantial work connection, as he was traveling to his regularly scheduled shift at a plant, and there was substantial evidence supporting the finding that the worker's employer-sponsored travel was an exception to the going and coming rule and was

thereby compensable; the worker was driving a company vehicle provided by the company, he was authorized to drive the vehicle to and from his various work sites, and there was no contention that he abandoned his work duties or deviated from his work destination for an unauthorized personal mission. Linde Gas v. Edmonds, 167 So. 3d 1258, 2014 Miss. App. LEXIS 547 (Miss. Ct. App. 2014), cert. denied, 168 So. 3d 962, 2015 Miss. LEXIS 355 (Miss. 2015).

15. —Proof of claim.

Denial of workers' compensation benefits to an employee was inappropriate because the employee met his burden of proof showing that he had an injury, or an exacerbation of a preexisting injury, when he moved a desk at the behest of his supervisor. Any doubtful claims were to be resolved in favor of compensation. Short v. Wilson Meat House, LLC, 37 So. 3d 50, 2009 Miss. App. LEXIS 333 (Miss. Ct. App. 2009), rev'd, 36 So. 3d 1247, 2010 Miss. LEXIS 310 (Miss. 2010).

In order to establish industrial disability, the burden is upon the claimant to prove medical impairment and that the medical impairment resulted in a loss of wage-earning capacity. Robinson v. Packard Electric Div., General Motors Corp., 523 So. 2d 329, 1988 Miss. LEXIS 199 (Miss. 1988).

When a claimant seeks compensation benefits for disability resulting from a mental or psychological injury, the claimant has the burden of proving by clear and convincing evidence the connection between the employment and the injury. Fought v. Stuart C. Irby Co., 523 So. 2d 314, 1988 Miss. LEXIS 86 (Miss. 1988).

Fact that claimant for disability benefits does not report injury until 4 days after it occurs neither proves that disability must have been caused by something other than injury in course of employment nor bars claim as untimely, notwithstanding employer's policy requiring that workers report injuries immediately. South Cent. Bell Tel. Co. v. Aden, 474 So. 2d 584, 1985 Miss. LEXIS 2197 (Miss. 1985).

The burden of proving his claim beyond speculation and conjecture is on the claimant, and he must prove that his injury is one which arises out of, and is sustained in, the course of employment. Flintkote Co. v. Jackson, 192 So. 2d 395, 1966 Miss. LEXIS 1251 (Miss. 1966); Johnson v. Gulfport Laundry & Cleaning Co., 249 Miss. 11, 162 So. 2d 859, 1964 Miss. LEXIS 370 (Miss. 1964).

Claimant has the burden of establishing every essential element of the claim, and it is not sufficient to leave anything to surmise or conjecture. Narkeeta, Inc. v. McCoy, 247 Miss. 65, 153 So. 2d 798, 1963 Miss. LEXIS 282 (Miss. 1963).

The burden is on claimant to show that disability resulted from, or was substantially caused by, an injury received while employed. Wells-Lamont Corp. v. Watkins, 247 Miss. 379, 151 So. 2d 600, 1963 Miss. LEXIS 311 (Miss. 1963).

The presumption that injury sustained by an employee arose out of his employment is rebuttable. Connell v. Armstrong Tire & Rubber Co., 242 Miss. 280, 134 So. 2d 435, 1961 Miss. LEXIS 556 (Miss. 1961).

Where accident arising out of and in the course of the employment is shown, the burden is on the employer to prove that disability is due to some cause for which he is not responsible. Hale v. General Box Mfg. Co., 235 Miss. 301, 108 So. 2d 844, 1959 Miss. LEXIS 430 (Miss. 1959).

Where an employee was found to have tuberculosis on a date some six weeks after he had left the employment of his former employer and started working for an independent contractor, medical evidence, including testimony as to the rapid progress of tuberculosis in members of the negro race, as well as the difficulty of determining when the employee first contracted the disease, presented a question of fact for the workmen's compensation board as to whether the employee had the disease at the time he left the former employer's service, and its determination that he did not, being supported by substantial evidence, would be affirmed. Lawson v. Traxler Gravel Co., 229 Miss. 159, 90 So. 2d 204, 1956 Miss. LEXIS 596 (Miss. 1956).

17. — — Benefits denied.

Worker's compensation claimant failed to prove that she had suffered a compens-

able injury because the claimant, although the claimant alleged that the claimant injured the claimant's back when a coworker kicked the claimant in the back at work, failed to prove by a preponderance of the evidence that the claimant suffered a compensable injury as the claimant's testimony was contradicted by the testimony of the person who allegedly kicked the claimant and the medical evidence did not corroborate the claimant's allegation of a traumatic low-back injury. Ross v. Jay's Truck Stop, 172 So. 3d 775, 2013 Miss. App. LEXIS 240 (Miss. Ct. App. 2013).

18. Accidental injury or death.

20. —Not entitled to benefits.

Substantial evidence supported the Mississippi Workers' Compensation Commission's finding that an employee was unable to show that limitations on her ability to perform manual labor had any impact on her ability to perform the duties of her employment or resulted in a loss of wage-earning capacity because the employee had a history of employment in sedentary, clerical positions, supporting a reasonable inference that a restriction to light-duty work would not be a hindrance to her. Weathersby v. Miss. Baptist Health Sys., 195 So. 3d 877, 2016 Miss. App. LEXIS 421 (Miss. Ct. App. 2016).

Mississippi Workers' Compensation Commission did not err in finding that an employee failed to prove she suffered a permanent disability because the presumption of no loss of wage-earning capacity applied since her post-injury wages were the same as her pre-injury wages; the employee failed to rebut the presumption because she presented no evidence of an increase in wage levels since her injury, that she was working additional hours, or that she was being paid out of her employer's sympathy. Weathersby v. Miss. Baptist Health Sys., 195 So. 3d 877, 2016 Miss. App. LEXIS 421 (Miss. Ct. App. 2016).

30. Pre-existing disease or infirmity.

34. —Apportionment.

36. — — Not required.

Mississippi Workers' Compensation Commission's decision not to apportion disability benefits as a result of a claimant's preexisting conditions was based on substantial evidence. There was nothing in the record to show that the claimant's diabetes hindered the claimant from performing the claimant's job duties as a deputy sheriff, and there was very little evidence describing the claimant's heart condition, and no mention of how, if at all, it affected the claimant's ability to perform the claimant's job duties. Leflore County Bd. of Supervisors v. Golden, 169 So. 3d 882, 2014 Miss. App. LEXIS 86 (Miss. Ct. App. 2014).

37. Deviation from employment or duties.

Worker made a voluntary decision to leave his area of employment and climb 25 feet up a tree, where he was not present and ready to further his employer's business, and falling out of a tree was not a risk incident to his employment as a pipefitter; the worker's tree climbing was a complete and serious deviation from his employment and therefore not within the scope and course of his employment, and thus his injury sustained after falling out of the tree was not compensable. Haney v. Fabricated Pipe, Inc., 203 So. 3d 725, 2016 Miss. App. LEXIS 722 (Miss. Ct. App. 2016).

38. Injury from assault or other intentional acts.

Although Miss. Code Ann. § 71-3-7(4) provides that workers' compensation benefits may be denied to an injured employee if there is evidence that the employee willfully intended to injure himself, the Supreme Court concluded that there was no credible evidence to suggest that a city employee willfully acted with the intent to injure himself and that the city failed to meet its burden of proving otherwise. City of Jackson v. Brown, 235 So. 3d 190, 2017 Miss. App. LEXIS 382 (Miss. Ct. App. 2017), cert. denied, — So. 3d —, 2018 Miss. LEXIS 40 (Miss. 2018).

There was substantial evidence to support the Workers' Compensation Commission's conclusion that the worker's actions did not constitute a willful intent to cause injury to himself, given that the company

cited no authority that would have equated the worker's actions to willful intent, and there was no evidence establishing that his lack of sleep or consumption of pain medication would have caused the accident or shown a willful intent to injure himself. Linde Gas v. Edmonds, 167 So. 3d 1258, 2014 Miss. App. LEXIS 547 (Miss. Ct. App. 2014), cert. denied, 168 So. 3d 962, 2015 Miss. LEXIS 355 (Miss. 2015).

Substantial evidence supported a decision that the claimant acted in such a way as to intentionally injure himself, thus disqualifying himself from benefits, as it showed that the claimant had one hand on the primary electrical line and one on the neutral line at the time of the incident, and given the large distance between the lines, a finding that he intentionally placed his hands on the lines being fully aware of the consequences was warranted. Smith v. Tippah Elec. Power Ass'n, 138 So. 3d 934, 2013 Miss. App. LEXIS 298 (Miss. Ct. App. 2013), rev'd, 138 So. 3d 900, 2014 Miss. LEXIS 176 (Miss. 2014).

41. Intoxication.

Mississippi Workers' Compensation Commission did not err by denying a claimant workers' compensation benefits, pursuant to Miss. Code Ann. § 71-3-7, because substantial evidence supported the Commission's factual finding that the claimant's intoxication at the time of his fall from the top of a wall at work was the proximate cause of his accident and injury. Payton v. Rod Cooke Constr. Co., 126 So. 3d 911, 2013 Miss. App. LEXIS 71 (Miss. Ct. App.), cert. denied, 127 So. 3d 1115, 2013 Miss. LEXIS 633 (Miss. 2013).

43. Liability of contractors and subcontractors.

Trial court erred in granting a general contractor a partial summary judgment in its action against its insurer for breach of contract, declaratory judgment, and defamation because the contractor was statutorily required to secure workers' compensation coverage for the employees of its uninsured subcontractors where the contractor chose to use subcontractors who employed fewer than five employees and who did not secure workers' compensation coverage, and the number of employees of the subcontractor was not a factor in determining general-contractor liability under the Workers' Compensation Act. Builders & Contrs. Ass'n of Miss. v. Laser Line Constr. Co., LLC, — So. 3d —, 2017Miss. LEXIS 270 (Miss. June 29, 2017).

48. Immunity.

Owner of a petroleum refinery plant was not immune from a negligence action filed by a contractor's employee, and thus, it was subject to the employee's tort claim as "any other party," because it was not statutory employer of the employee; the owner had no duty as an employer or contractor to secure workers' compensation insurance, and its act of voluntarily purchasing coverage did not change its status. Thomas v. Chevron U.S.A., Inc., 212 So. 3d 58, 2017 Miss. LEXIS 27 (Miss. 2017).

49. Wage-earning potential.

Administrative law judge (ALJ) and the Workers' Compensation Commission both failed to recognize that the claimant's return to work created a rebuttable presumption that the claimant suffered no loss of earning capacity. The ALJ committed legal error by failing to recognize this presumption, and the Commission and the appellate court failed to correct the error. Hudspeth Reg'l Ctr. v. Mitchell, 202 So. 3d 609, 2016 Miss. LEXIS 438 (Miss. 2016).

Mississippi Workers' Compensation Commission's finding that there was no loss of wage-earning capacity was supported by substantial evidence because the evidence showed that the claimant could have returned to the claimant's previous job had there been a job available, and that the claimant could have found employment earning the same amount of pre-injury income. Whiddon v. Southern Concrete Pumping, LLC, 114 So. 3d 18, 2013 Miss. App. LEXIS 208 (Miss. Ct. App. 2013).

Denial of permanent partial disability benefits to the employee in a workers' compensation action was improper because his post-injury income would have been higher but for a climbing restriction

and therefore, the Workers' Compensation Commission erred by finding that the injury had no impact on his wage-earning potential. Gregg v. Natchez Trace Elec. Power Ass'n, 64 So. 3d 473, 2011 Miss. LEXIS 280 (Miss. 2011).

RESEARCH REFERENCES

ALR.

Construction and Application of State Workers' Compensation Laws to Claim for Hearing Loss – Resulting from Single Traumatic Accident or Event. 90 A.L.R.6th 425.

§ 71-3-9. Exclusiveness of liability.

[Effective until July 1, 2021, this section will read:]

The liability of an employer to pay compensation shall be exclusive and in place of all other liability of such employer to the employee, his legal representative, husband or wife, parents, dependents, next-of-kin, and anyone otherwise entitled to recover damages at common law or otherwise from such employer on account of such injury or death, except that if an employer fails to secure payment of compensation as required by this chapter, an injured employee, or his legal representative in case death results from the injury, may elect to claim compensation under this chapter, or to maintain an action at law for damages on account of such injury or death. In such action the defendant may not plead as a defense that the injury was caused by the negligence of a fellow servant, nor that the employee assumed the risk of his employment, nor that the injury was due to the contributory negligence of the employee.

[Effective from and after July 1, 2021, this section will read:]

(1) Except as provided under subsection (2) of this section, the liability of an employer to pay compensation shall be exclusive and in place of all other liability of such employer to the employee, his legal representative, husband or wife, parents, dependents, next of kin, and anyone otherwise entitled to recover damages at common law or otherwise from such employer on account of such injury or death, except that if an employer fails to secure payment of compensation as required by this chapter, an injured employee, or his legal representative in case death results from the injury, may elect to claim compensation under this chapter, or to maintain an action at law for damages on account of such injury or death. In such action the defendant may not plead as a defense that the injury was caused by the negligence of a fellow servant, nor that the employee assumed the risk of his employment, nor that the injury was due to the contributory negligence of the employee.

(2) An employer shall not be liable under this chapter to a first responder, as defined in Section 25-15-403, if such first responder elects to receive benefits under the "Mississippi First Responders Health and Safety Act."

HISTORY: Codes, 1942, § 6998-05; Laws, 1948, ch. 354, § 5; reenacted without change, Laws, 1982, ch. 473, § 5; reenacted without change, Laws, 1990, ch. 405, § 5, eff from and after July 1, 1990; Laws, 2019, ch. 467, § 6, eff from and after July 1, 2021.

Amendment Notes — The 2019 amendment, effective July 1, 2021, added the exception at the beginning of (1); and added (2).

Cross References — Mississippi First Responders Health and Safety Act, see § 25-15-401 et seq.

JUDICIAL DECISIONS

ANALYSIS

3. Employer-employee relationship.
4. Action against compensation carrier.
5. Action for wrongful death.
7. Willful acts of employer or co-employee.
8. Negligent infliction of emotional distress.
8.5. Intentional infliction of emotional distress.

3. Employer-employee relationship.

Company did not waive its exclusive remedy defense because the issue had been at the forefront of the litigation throughout; the company's third-party complaint made clear that the worker's status as an employee or independent contractor was a central issue and its affirmative defense in the case, and the company never abandoned the issue in any sense or actively seek to litigate the underlying merits of the worker's claim. Fortner v. Specialty Contr., LLC, 217 So. 3d 736, 2017 Miss. App. LEXIS 54 (Miss. Ct. App. 2017).

Doctrines of quasi-estoppel and equitable estoppel did not bar a company from denying that a worker was an independent contractor because the worker failed to articulate how he relied to his detriment on any representation by the company to show that it took inconsistent positions and that the company benefitted from any inconsistent position; the company's failure to file a timely notice of the worker's injury did not estop it from raising the exclusive remedy provision as a defense. Fortner v. Specialty Contr., LLC, 217 So. 3d 736, 2017 Miss. App. LEXIS 54 (Miss. Ct. App. 2017).

Circuit court properly granted a company summary judgment in a worker's action alleging it was liable for its employee's negligence because his exclusive remedy was under the Workers' Compensation Law; the nature of the work was that of an employee covered by the Law because the work did not involve any particular skill or training, and the worker was not in the business of offering similar services to other entities as part of his own independent business. Fortner v. Specialty Contr., LLC, 217 So. 3d 736, 2017 Miss. App. LEXIS 54 (Miss. Ct. App. 2017).

Coverage under the Workers' Compensation Law is not limited to employees who work directly with the owner of the business. Fortner v. Specialty Contr., LLC, 217 So. 3d 736, 2017 Miss. App. LEXIS 54 (Miss. Ct. App. 2017).

Worker's exclusive remedy was under the Workers' Compensation Law because pursuant to the "control test," the worker was a company's employee not an independent contractor; the company had the right to control the work and it exercised that right, the worker was paid a regular daily wage rather than a fixed fee for some project or job, and the company provided all necessary tools and could have fired him at any time. Fortner v. Specialty Contr., LLC, 217 So. 3d 736, 2017 Miss. App. LEXIS 54 (Miss. Ct. App. 2017).

Owner of a petroleum refinery plant was not immune from a negligence action filed by a contractor's employee, and thus, it was subject to the employee's tort claim as "any other party," because it was not statutory employer of the employee; the owner had no duty as an employer or contractor to secure workers' compensation insurance, and its act of voluntarily purchasing coverage did not change its status. Thomas v. Chevron U.S.A., Inc., 212 So. 3d 58, 2017 Miss. LEXIS 27 (Miss. 2017).

4. Action against compensation carrier.

Where an employee asserted an action against a worker's compensation insurer because of the insurer's intentional bad-faith refusal to pay worker's compensa-

tion when due, Mississippi law applied because, inter alia, an insurer's intentional bad-faith refusal to pay worker's compensation timely is an independent tort committed by the insurer outside of the scope of the worker's employment and it is legally distinct from and independent of any claims arising under the Mississippi Workers' Compensation Act, and Mississippi had the most significant relationship to the intentional tort suit. Williams v. Liberty Mut. Ins. Co., 741 F.3d 617, 2014 U.S. App. LEXIS 1726 (5th Cir. Miss. 2014).

5. Action for wrongful death.

Employer waived an exclusivity defense in a wrongful death suit because (1) exclusivity was an affirmative defense, as the defense would have terminated the litigation, and, (2) while the employer raised the defense in an answer, the employer did not raise the defense again until moving for summary judgment after actively participating in the litigation for more than 26 months, and the record suggested no extreme and unusual circumstances justifying the delay in bringing the defense to the court's attention and requesting a hearing. Hanco Corp. v. Goldman, 178 So. 3d 709, 2015 Miss. LEXIS 467 (Miss. 2015).

7. Willful acts of employer or co-employee.

Plaintiffs' claim that their former employer battered them when it failed to remediate toxic mold, which they later inhaled, and by spraying the mold with a substance that injured them, was barred by workers' compensation exclusivity because 1) they did not assert that the employer acted with actual intent to batter and injure them; and 2) the employer could not allow the mold to exist with the intent of injuring them while at the same time attempting to destroy the mold. Bowden v. Young, 120 So. 3d 971, 2013 Miss. LEXIS 459 (Miss. 2013).

8. Negligent infliction of emotional distress.

Employee could not assert a negligent infliction of emotional distress claim against an employer for firing the employee because workers' compensation was the employee's exclusive remedy. Petty v. Baptist Mem. Health Care Corp., 190 So. 3d 17, 2015 Miss. App. LEXIS 639 (Miss. Ct. App. 2015), cert. dismissed, — So. 3d —, 2016 Miss. LEXIS 175 (Miss. 2016).

Because a former nurse, who was an at-will employee at a hospital, claimed that the hospital was liable to the nurse for negligent infliction of emotional distress arising from the hospital's termination of the nurse, the nurse could not maintain an action against the hospital for negligent infliction of emotional distress. Petty v. Baptist Mem. Health Care Corp. Baptist Mem, — So. 3d —, 2015 Miss. App. LEXIS 122 (Miss. Ct. App. Mar. 10, 2015), sub. op., 190 So. 3d 17, 2015 Miss. App. LEXIS 639 (Miss. Ct. App. 2015).

Mississippi Workers' Compensation statutes provided an exclusive remedy for negligence claims by employees against their employers. Miss. Code Ann. § 71-3-1. Therefore, the employee's negligent infliction of emotional distress claim was barred by Mississippi Workers' Compensation law. Claiborne v. Miss. Bd. of Pharm., 2011 U.S. Dist. LEXIS 93849 (S.D. Miss. Aug. 22, 2011).

8.5. Intentional infliction of emotional distress.

Plaintiffs' intentional infliction of emotional distress claim against their former employer was barred by workers' compensation exclusivity, because the employer's initial denial that there was toxic mold in the building did not rise to the level of outrageous and extreme conduct, especially in view of its later actions to remediate the mold. Bowden v. Young, 120 So. 3d 971, 2013 Miss. LEXIS 459 (Miss. 2013).

§ 71-3-13. Maximum and minimum recovery.

JUDICIAL DECISIONS

2. Partial disability cases.

Employee's permanent-partial disability compensation period for two injuries that arose from a workplace accident was properly limited to 450 weeks in order to avoid the pyramiding of benefits, as the 450-week award for his body-as-a-whole injury would have still been running when the 200-week award for his shoulder injury would have started to run. Tucker v. Bellsouth Telcoms., Inc., 130 So. 3d 96, 2013 Miss. App. LEXIS 357 (Miss. Ct. App. 2013), cert. denied, 131 So. 3d 577, 2014 Miss. LEXIS 48 (Miss. 2014), cert. denied, 131 So. 3d 577, 2014 Miss. LEXIS 39 (Miss. 2014).

§ 71-3-15. Medical services and supplies.

(1) The employer shall furnish such medical, surgical, and other attendance or treatment, nurse and hospital service, medicine, crutches, artificial members, and other apparatus for such period as the nature of the injury or the process of recovery may require. The injured employee shall have the right to accept the services furnished by the employer or, in his discretion, to select one (1) competent physician of his choosing and such other specialists to whom he is referred by his chosen physician to administer medical treatment. Referrals by the chosen physician shall be limited to one (1) physician within a specialty or subspecialty area. Except in an emergency requiring immediate medical attention, any additional selection of physicians by the injured employee or further referrals must be approved by the employer, if self-insured, or the carrier prior to obtaining the services of the physician at the expense of the employer or carrier. If denied, the injured employee may apply to the commission for approval of the additional selection or referral, and if the commission determines that such request is reasonable, the employee may be authorized to obtain such treatment at the expense of the employer or carrier. Approval by the employer or carrier does not require approval by the commission. A physician to whom the employee is referred by his employer shall not constitute the employee's selection, unless the employee, in writing, accepts the employer's referral as his own selection. However, if the employee is treated for his alleged work-related injury or occupational disease by a physician for six (6) months or longer, or if the employee has surgery for the alleged work-related injury or occupational disease performed by a physician, then that physician shall be deemed the employee's selection. Should the employer desire, he may have the employee examined by a physician other than of the employee's choosing for the purpose of evaluating temporary or permanent disability or medical treatment being rendered under such reasonable terms and conditions as may be prescribed by the commission. If at any time during such period the employee unreasonably refuses to submit to medical or surgical treatment, the commission shall, by order, suspend the payment of further compensation during such time as such refusal continues, and no compensation shall be paid at any time during the period of such suspension; provided, that no claim for medical or surgical treatment shall be

valid and enforceable, as against such employer, unless within twenty (20) days following the first treatment the physician or provider giving such treatment shall furnish to the employer, if self-insured, or its carrier, a preliminary report of such injury and treatment, on a form or in a format approved by the commission. Subsequent reports of such injury and treatment must be submitted at least every thirty (30) days thereafter until such time as a final report shall have been made. Reports which are required to be filed hereunder shall be furnished by the medical provider to the employer or carrier, and it shall be the responsibility of the employer or carrier receiving such reports to promptly furnish copies to the commission. The commission may, in its discretion, excuse the failure to furnish such reports within the time prescribed herein if it finds good cause to do so, and may, upon request of any party in interest, order or direct the employer or carrier to pay the reasonable value of medical services rendered to the employee.

(2) Whenever in the opinion of the commission a physician has not correctly estimated the degree of permanent disability or the extent of the temporary disability of an injured employee, the commission shall have the power to cause such employee to be examined by a physician selected by the commission, and to obtain from such physician a report containing his estimate of such disabilities. The commission shall have the power in its discretion to charge the cost of such examination to the employer, if he is a self-insurer, or to the insurance company which is carrying the risk.

(3) In carrying out this section, the commission shall establish an appropriate medical provider fee schedule, medical cost containment system and utilization review which incorporates one or more medical review panels to determine the reasonableness of charges and the necessity for the services, and limitations on fees to be charged by medical providers for testimony and copying or completion of records and reports and other provisions which, at the discretion of the commission, are necessary to encompass a complete medical cost containment program. The commission may contract with a private organization or organizations to establish and implement such a medical cost containment system and fee schedule with the cost for administering such a system to be paid out of the administrative expense fund as provided in this chapter. All fees and other charges for such treatment or service shall be limited to such charges as prevail in the same community for similar treatment and shall be subject to regulation by the commission. No medical bill shall be paid to any doctor until all forms and reports required by the commission have been filed. Any employee receiving treatment or service under the provisions of this chapter may not be held responsible for any charge for such treatment or service, and no doctor, hospital or other recognized medical provider shall attempt to bill, charge or otherwise collect from the employee any amount greater than or in excess of the amount paid by the employer, if self-insured, or its workers' compensation carrier. Any dispute over the amount charged for service rendered under the provisions of this chapter, or over the amount of reimbursement for services rendered under the provisions of this chapter, shall be limited to and resolved between the provider and

the employer or carrier in accordance with the fee dispute resolution procedures adopted by the commission.

(4) The liability of an employer for medical treatment as herein provided shall not be affected by the fact that his employee was injured through the fault or negligence of a third party, not in the same employ, provided the injured employee was engaged in the scope of his employment when injured. The employer shall, however, have a cause of action against such third party to recover any amounts paid by him for such medical treatment.

(5) An injured worker who believes that his best interest has been prejudiced by the findings of the physician designated by the employer or carrier shall have the privilege of a medical examination by a physician of his own choosing, at the expense of the carrier or employer. Such examination may be had at any time after injury and prior to the closing of the case, provided that the charge shall not exceed One Hundred Dollars ($100.00) and shall be paid by the carrier or employer where the previous medical findings are upset, but paid by the employee if previous medical findings are confirmed.

(6) Medical and surgical treatment as provided in this section shall not be deemed to be privileged insofar as carrying out the provisions of this chapter is concerned. All findings pertaining to a second opinion medical examination, at the instance of the employer shall be reported as herein required within fourteen (14) days of the examination, except that copies thereof shall also be furnished by the employer or carrier to the employee. All findings pertaining to an independent medical examination by order of the commission shall be reported as provided in the order for such examination.

(7) Any medical benefits paid by reason of any accident or health insurance policy or plan paid for by the employer, which were for expenses of medical treatment under this section, are, upon notice to the carrier prior to payment by it, subject to subrogation in favor of the accident or health insurance company to the extent of its payment for medical treatment under this section. Reimbursement to the accident or health insurance company by the carrier or employer, to the extent of such reimbursement, shall constitute payment by the employer or carrier of medical expenses under this section. Under no circumstances, shall any subrogation be had by any insurance company against any compensation benefits paid under this chapter.

HISTORY: Codes, 1942, § 6998-08; Laws, 1948, ch. 354, § 7; Laws, 1950, ch. 412, § 5; reenacted and amended, Laws, 1982, ch. 473, § 8; reenacted without change, Laws, 1990, ch. 405, § 8; Laws, 1992, ch. 577, § 3; Laws, 1995, ch. 582, § 2; Laws, 2012, ch. 522, § 3, eff from and after July 1, 2012.

Editor's Notes — Laws of 2012, ch. 522, §§ 10 and 11, provide:

"SECTION 10. The Workers' Compensation Commission shall promulgate a written statement specifying the changes made to the Workers' Compensation Law by this act to every employer in this state subject to the Workers' Compensation Law. Within ten (10) days of receipt of this written statement from the Commission, every employer shall post the Commission's statement in a conspicuous place or places in and about his place or places of business and adjacent to the Notice of Coverage as required by Section 71-3-81.

"SECTION 11. This act shall take effect and be in force from and after July 1, 2012, and shall apply to injuries occurring on or after July 1, 2012."

Amendment Notes — The 2012 amendment added the ninth sentence beginning with "However, if the employee is treated for his alleged" and ending "employee's selection" in (1).

JUDICIAL DECISIONS

ANALYSIS

1. In general.
2. Liability for services.
3. —Employer required to provide.
4. —Employer not required to provide.
6. —Failure to request.
7. Refusal to submit to examination or treatment.

1. In general.

Workers' Compensation Commission did not err in failing to exclude a doctor's deposition based on the four-factor test applicable to determine whether excluding evidence for a transgression in discovery was an appropriate sanction because the doctor was a nonparty witness selected to perform an an employer's medical examination; after the employee served a subpoena on the doctor, he filed his own motion to quash the subpoena and relied on the advice of his counsel to refuse to answer questions. Wright v. Turan-Foley Motors, Inc., 269 So. 3d 160, 2018 Miss. App. LEXIS 35 (Miss. Ct. App. 2018).

2. Liability for services.

Employee could pursue a kidney condition as part of the employee's original compensable lung injury because (1) the condition flowed from the injury's treatment, (2) Miss. Code Ann. § 71-3-15 obliged the employee's employer to provide treatment, and (3) the employer knew a causal link between the treatment and condition was possible. Bellsouth Telecomms., Inc. v. Harris, 174 So. 3d 909, 2015 Miss. App. LEXIS 272 (Miss. Ct. App. 2015).

3. —Employer required to provide.

Although an employer contended that a claimant's treatment should have ended when the claimant refused doctors' orders regarding physical therapy, the Mississippi Workers' Compensation Commission did not err in concluding that future epidural injections, stellate ganglion blocks, and spinal stimulators might be considered in the future under such circumstances as outlined by the Commission. Blackwell v. Howard Indus., 243 So. 3d 774, 2018 Miss. App. LEXIS 43 (Miss. Ct. App. 2018).

Substantial evidence supported the Mississippi Workers' Compensation Commission's (Commission) decision requiring an employer to provide medical treatment for an employee's kidney condition resulting from treatment of the employee's original compensable lung injury because (1) the Commission properly denied the employer's untimely attempt to supplement the record with a contrary medical opinion, (2) supporting medical evidence did not have to find a link between the condition and the injury's treatment to a reasonable medical certainty, and (3) that evidence supported the decision. Bellsouth Telecomms., Inc. v. Harris, 174 So. 3d 909, 2015 Miss. App. LEXIS 272 (Miss. Ct. App. 2015).

4. —Employer not required to provide.

Substantial evidence supported the Mississippi Workers' Compensation Commission's denial of an employee's treatment request because (1) an expert said the treatment was not needed or causally related to the employee's work injury, as the employee did not have complex regional sympathetic dystrophy and the employee's pain complaints were due to nonwork-related psychological issues, (2) the employee's medical records did not address the complaints' relation to the employee's compensable injury, and (3) this did not deny the employee's right to select a physician. Hamilton v. Southwire Co., 191 So. 3d 1275, 2016 Miss. App. LEXIS 264 (Miss. Ct. App. 2016).

Employee was not entitled to certiorari relief because an administrative law judge (ALJ) correctly found that the employee's treatment by three doctors fell outside the appropriate statutory chain of referral, the record did not support the employee's assertion that the ALJ and the Mississippi Workers' Compensation Commission disregarded the medical testimony of her unauthorized physicians, and the Commission's findings were supported by substantial evidence. Allegrezza v. Greenville Mfg. Co., 122 So. 3d 719, 2013 Miss. LEXIS 474 (Miss. 2013).

6. —Failure to request.

Preapproval of the neurosurgeon's treatment was not required, because there was only one referral from the treating physician. Miller v. Johnson Controls, 138 So. 3d 248, 2014 Miss. App. LEXIS 247 (Miss. Ct. App. 2014).

Mississippi Workers' Compensation Commission's refusal to consider the treatments of the claimant by three doctors and the denial of the claimant's motion to amend her petition to claim psychological overlay were proper as the claimant failed to seek permission from the employer or its carrier before receiving treatment from those doctors as required by Miss. Code Ann. § 71-3-15(1); no evidence of psychiatric complaints existed before the claimant's release to return to work under the rehabilitation specialist's restrictions. Allegrezza v. Greenville Mfg. Co., 122 So. 3d 755, 2012 Miss. App. LEXIS 594 (Miss. Ct. App. 2012), aff'd, 122 So. 3d 719, 2013 Miss. LEXIS 474 (Miss. 2013).

7. Refusal to submit to examination or treatment.

Substantial evidence supported the Mississippi Workers' Compensation Commission's decision to deny a claimant total disability benefits because various physicians who saw the claimant determined that the claimant's failure to participate steadfastly in recommended physical therapy impacted the claimant's condition. Blackwell v. Howard Indus., 243 So. 3d 774, 2018 Miss. App. LEXIS 43 (Miss. Ct. App. 2018).

§ 71-3-17. Compensation for disability.

Compensation for disability shall be paid to the employee as follows:

(a) Permanent total disability: In case of total disability adjudged to be permanent, sixty-six and two-thirds percent (66-⅔%) of the average weekly wages of the injured employee, subject to the maximum limitations as to weekly benefits as set up in this chapter, shall be paid to the employee not to exceed four hundred fifty (450) weeks or an amount greater than the multiple of four hundred fifty (450) weeks times sixty-six and two-thirds percent (66-⅔%) of the average weekly wage for the state. Loss of both hands, or both arms, or both feet, or both legs, or both eyes, or of any two (2) thereof shall constitute permanent total disability. In all other cases, permanent total disability shall be determined in accordance with the facts.

(b) Temporary total disability: In case of disability, total in character but temporary in quality, sixty-six and two-thirds percent (66-⅔%) of the average weekly wages of the injured employee, subject to the maximum limitations as to weekly benefits as set up in this chapter, shall be paid to the employee during the continuance of such disability not to exceed four hundred fifty (450) weeks or an amount greater than the multiple of four hundred fifty (450) weeks times sixty-six and two-thirds percent (66-⅔%) of the average weekly wage for the state. Provided, however, if there arises a conflict in medical opinions of whether or not the claimant has reached maximum medical recovery and the claimant's benefits have been termi-

nated by the carrier, then the claimant may demand an immediate hearing before the commissioner upon five (5) days' notice to the carrier for a determination by the commission of whether or not in fact the claimant has reached maximum recovery.

(c) Permanent partial disability: In case of disability partial in character but permanent in quality, the compensation shall be sixty-six and two-thirds percent (66-⅔%) of the average weekly wages of the injured employee, subject to the maximum limitations as to weekly benefits as set up in this chapter, which shall be paid following compensation for temporary total disability paid in accordance with paragraph (b) of this section, and shall be paid to the employee as follows:

Member Lost		Number Weeks Compensation
(1)	Arm	200
(2)	Leg	175
(3)	Hand	150
(4)	Foot	125
(5)	Eye	100
(6)	Thumb	60
(7)	First finger	35
(8)	Great toe	30
(9)	Second finger	30
(10)	Third finger	20
(11)	Toe other than great toe	10
(12)	Fourth finger	15
(13)	Testicle, one	50
(14)	Testicle, both	150
(15)	Breast, female, one	50
(16)	Breast, female, both	150

(17) Loss of hearing: Compensation for loss of hearing of one (1) ear, forty (40) weeks. Compensation for loss of hearing of both ears, one hundred fifty (150) weeks.

(18) Phalanges: Compensation for loss of more than one (1) phalange of a digit shall be the same as for loss of the entire digit. Compensation for loss of the first phalange shall be one-half (½) of the compensation for loss of the entire digit.

(19) Amputated arm or leg: Compensation for an arm or leg, if amputated at or above wrist or ankle, shall be for the loss of the arm or leg.

(20) Binocular vision or percent of vision: Compensation for loss of binocular vision or for eighty percent (80%) or more of the vision of an eye shall be the same as for loss of the eye.

(21) Two (2) or more digits: Compensation for loss of two (2) or more digits, or one (1) or more phalanges of two (2) or more digits, of a hand or foot may be proportioned to the loss of the use of the hand or foot occasioned thereby, but shall not exceed the compensation for loss of a hand or foot.

(22) Total loss of use: Compensation for permanent total loss of use of a member shall be the same as for loss of the member.

(23) Partial loss or partial loss of use: Compensation for permanent partial loss or loss of use of a member may be for proportionate loss or loss of use of the member.

(24) Disfigurement: The commission, in its discretion, is authorized to award proper and equitable compensation for serious facial or head disfigurements not to exceed Five Thousand Dollars ($5,000.00). No such award shall be made until a lapse of one (1) year from the date of the injury resulting in such disfigurement.

(25) Other cases: In all other cases in this class of disability, the compensation shall be sixty-six and two-thirds percent (66-⅔%) of the difference between his average weekly wages, subject to the maximum limitations as to weekly benefits as set up in this chapter, and his wage-earning capacity thereafter in the same employment or otherwise, payable during the continuance of such partial disability, but subject to reconsideration of the degree of such impairment by the commission on its own motion or upon application of any party in interest. Such payments shall in no case be made for a longer period than four hundred fifty (450) weeks.

(26) In any case in which there shall be a loss of, or loss of use of, more than one (1) member or parts of more than one (1) member set forth in subparagraphs (1) through (23) of this paragraph (c), not amounting to permanent total disability, the award of compensation shall be for the loss of, or loss of use of, each such member or parts thereof, which awards shall run consecutively, except that where the injury affects only two (2) or more digits of the same hand or foot, subparagraph (21) of this paragraph (c) shall apply.

HISTORY: Codes, 1942, § 6998-09; Laws, 1948, ch. 354, § 8a-c; Laws, 1950, ch. 412, § 6; Laws, 1958, ch. 454, § 3; Laws, 1968, ch. 559, § 5; Laws, 1972, ch. 522, § 3; Laws, 1976, ch. 459, § 2; Laws, 1979, ch. 442, § 2; Laws, 1981, ch. 341, § 2; reenacted, Laws, 1982, ch. 473, § 9; Laws, 1984, ch. 402, § 2; Laws, 1988, ch. 446, § 3; reenacted without change, Laws, 1990, ch. 405, § 9; Laws, 2012, ch. 522, § 4, eff from and after July 1, 2012.

Editor's Notes — Laws of 2012, ch. 522, §§ 10 and 11, provide:

"SECTION 10. The Workers' Compensation Commission shall promulgate a written statement specifying the changes made to the Workers' Compensation Law by this act to every employer in this state subject to the Workers' Compensation Law. Within ten (10) days of receipt of this written statement from the Commission, every employer shall post the Commission's statement in a conspicuous place or places in and about his place or places of business and adjacent to the Notice of Coverage as required by Section 71-3-81.

"SECTION 11. This act shall take effect and be in force from and after July 1, 2012, and shall apply to injuries occurring on or after July 1, 2012."

Amendment Notes — The 2012 amendment substituted "Five Thousand Dollars ($5,000.00)" for "Two Thousand Dollars ($2,000.00)" in (c)(24); and made minor stylistic changes throughout.

JUDICIAL DECISIONS

ANALYSIS

1. In general.
4. Wage earning capacity, generally.
6. —Burden of proof.
7. —Presumption.
9. — Particular cases; no loss in earning capacity.
11. Amount of recovery.
12. Loss of or injury to scheduled members.
15. Disability rating.
16. Pre-existing disease or infirmity.
19. Maximum medical improvement.
20. Effect of receipt of disability benefits.

1. In general.

Workers' Compensation Commission properly determined that an employee was capable of performing the substantial acts of her usual employment and that she was not permanently and totally disabled or entitled to benefits because the employee's testimony that she was unable to perform the jobs offered to her upon her return to the employer, combined with her contention that she was unemployable, was insufficient to overcome the high burden of showing that the Commission's decision was unsupported by substantial evidence, and she failed to provide any evidence or testimony that she was, in fact, unable to perform the job presented to her when she returned to the employer for a few hours. Smith v. Howard Indus., Inc., 271 So. 3d 774, 2018 Miss. App. LEXIS 647 (Miss. Ct. App. 2018).

Award of permanent partial disability benefits was upheld and the employer's argument that the claimant did not document a job search for a year and a half after he was terminated and reached maximum medical improvement went to the weight of the evidence, not its sufficiency. Howard Indus. v. Hardaway, 191 So. 3d 1257, 2015 Miss. App. LEXIS 465 (Miss. Ct. App. 2015), cert. denied, 202 So. 3d 208, 2016 Miss. LEXIS 207 (Miss. 2016).

Employee was not entitled to any benefits in excess of those already paid by the employer because she did not establish any additional loss of industrial use in excess of her medical ratings, and she was currently employed within her restrictions and earning a higher wage than her pre-injury wage. Gaston v. Tyson Foods, Inc., 122 So. 3d 797, 2013 Miss. App. LEXIS 603 (Miss. Ct. App. 2013).

4. Wage earning capacity, generally.

Given that a loss of wage-earning capacity is only pertinent to Miss. Code Ann. § 71-3-17(c)(25) with respect to a finding of permanent partial disability, and the worker should have been assessed a loss of wage-earning capacity, if the Workers' Compensation Commission were to find that the worker's disability was permanent and partial, then § 71-3-17(c)(25) would apply, and for permanent and total disability, § 71-3-17(a) would apply, not § 71-3-17(c)(2) as applied by the Commission. Logan v. Klaussner Furniture Corp., — So. 3d —, 2017 Miss. App. LEXIS 474(Miss. Ct. App. Aug. 15, 2017).

Loss of wage earning capacity is only pertinent when a court has found the disability calculation should be governed by criteria other than the limited scheduled-member criteria of Miss. Code Ann. § 71-3-17(c)(1)-(24); § 71-3-17(c)(25)'s use is for that type of condition where there is permanent partial disability and a loss of wage-earning capacity. Logan v. Klaussner Furniture Corp., 238 So. 3d 1166, 2017 Miss. App. LEXIS 474 (Miss. Ct. App. 2017), rev'd, 238 So. 3d 1134, 2018 Miss. LEXIS 126 (Miss. 2018).

Claimant did not suffer a loss of industrial use due to a work-related injury, and, therefore, was not entitled to permanent disability benefits because, although there was no dispute that the claimant suffered from bilateral carpal tunnel syndrome, the claimant was released to regular-duty work with no restrictions and found other, albeit part-time, employment. Parker v. Ashley Furniture Indus., 164 So. 3d 1081, 2015 Miss. App. LEXIS 165 (Miss. Ct. App. 2015).

Finding by the administrative judge of permanent partial disability and loss of wage-earning capacity of 25 percent for the claimant's 1996 back injury was supported by the evidence as this injury did

not render the claimant permanently and totally disabled. Instead, the claimant continued to work for the employer for over ten years after suffering the injury. Flowers v. Crown Cork & Seal United States, 168 So. 3d 1009, 2013 Miss. App. LEXIS 388 (Miss. Ct. App. 2013), aff'd on other grounds, 167 So. 3d 188, 2014 Miss. LEXIS 208 (Miss. 2014).

Trial court did not err in affirming the decision of the Mississippi Workers' Compensation Commission, which assigned a workers' compensation claimant seeking permanent total benefits under Miss. Code Ann. § 71-3-17 a twenty percent loss of wage-earning capacity because the claimant did not demonstrate that he suffered a permanent total disability since he failed to show a complete loss of wage-earning capacity; the fact that the claimant was terminated from his employment did not entitle him to compensation payments because he admitted he did not contact the employer to keep it informed of his treatment, status, or any restrictions placed upon his employment, and the Commission found that the claimant could have returned to work with the employer in another suitable job, his job-search efforts were less than enthusiastic, and his job-search efforts were wasted since he pursued the same type of employment he had before his injury. Scott v. KLLM, Inc., 37 So. 3d 713, 2010 Miss. App. LEXIS 303 (Miss. Ct. App. 2010).

6. —Burden of proof.

Decision of the Mississippi Workers' Compensation Commission that a county rebutted the prima facie showing of permanent total disability was not supported by substantial evidence because the record failed to support a finding that an employee suffered only a permanent partial disability or no loss of wage-earning capacity; the medical testimony showed the employee had sustained permanent impairment. Harris v. Stone Cty. Bd. of Supervisors, 270 So. 3d 989, 2018 Miss. App. LEXIS 469 (Miss. Ct. App. 2018).

7. —Presumption.

Rebuttable presumption of no loss of wage-earning capacity arose because the worker's post-injury wages were equal to or exceeded her pre-injury wages. Lovett v. Delta Reg'l Med. Ctr., 157 So. 3d 90, 2014 Miss. App. LEXIS 235 (Miss. Ct. App. 2014), aff'd, in part, 157 So. 3d 88, 2015 Miss. LEXIS 50 (Miss. 2015).

9. — Particular cases; no loss in earning capacity.

Evidence supported the finding that the worker suffered no loss of wage-earning capacity, after weighing the reasonableness of the worker's job search; there was testimony that there were 25 jobs for the worker in the area, and she failed to seek her old position or reapply for any other position after her stroke, and the decision to deny permanent disability benefits was supported by the evidence. Lovett v. Delta Reg'l Med. Ctr., 157 So. 3d 90, 2014 Miss. App. LEXIS 235 (Miss. Ct. App. 2014), aff'd, in part, 157 So. 3d 88, 2015 Miss. LEXIS 50 (Miss. 2015).

Decision that an injured employee was not due additional temporary disability benefits was supported by substantial evidence because she was offered a job by the city within her lifting restrictions, her salary was equal to her prior salary, the employee ultimately failed to return to work, and her attempts to find employment were unsuccessful. Herbert v. City of Horn Lake, 138 So. 3d 943, 2013 Miss. App. LEXIS 643 (Miss. Ct. App. 2013).

Mississippi Workers' Compensation Commission erred by declaring that a claimant's permanent total disability benefits related back to the date of injury, as he was not "disabled" on that date because he was able to continue to work thereafter. Eaton Corp. v. Brown, 130 So. 3d 1131, 2013 Miss. App. LEXIS 344 (Miss. Ct. App. 2013), cert. denied, 131 So. 3d 578, 2014 Miss. LEXIS 80 (Miss. 2014).

11. Amount of recovery.

Reduction in the employee's award of permanent-partial disability benefits was improper because she chose to demonstrate that she could not perform the substantial acts of her usual employment and thus, the fact that she did not seek employment with the employer or any other company was not conclusive of whether she was entitled to permanent-partial disability benefits for the indus-

trial loss of use of her leg, Miss. Code Ann. § 71-3-17(c). Further, based on her injury and her restrictions, the employee was unable to perform the substantial acts of her usual employment in food service and as a caretaker. Cole v. Ellisville State Sch., 59 So. 3d 612, 2010 Miss. App. LEXIS 566 (Miss. Ct. App. 2010), cert. denied, 58 So. 3d 693, 2011 Miss. LEXIS 211 (Miss. 2011).

12. Loss of or injury to scheduled members.

Mississippi Workers' Compensation Commission's award of permanent partial disability benefits to the claimant due to the loss of use of his right upper extremity was upheld because the Commission's finding that the claimant could no longer perform the substantial acts of his usual occupation was supported by substantial evidence, as the claimant testified that every job he had performed over the last eight years required lifting 50 pounds occasionally and according to his medical restrictions he was only capable of occasionally lifting 18.5 pounds. Mueller Indus. v. Waits, 283 So. 3d 1137, 2019 Miss. App. LEXIS 142 (Miss. Ct. App.), cert. denied, 283 So. 3d 734, 2019 Miss. LEXIS 410 (Miss. 2019), cert. denied, — So. 3d —, 2019 Miss. LEXIS 470 (Miss. 2019).

The medical and vocational proof rebutted any presumption as to a claimant's alleged total industrial loss of use to the right upper extremity because the claimant's post-injury employment with the employer demonstrated that the claimant could perform some of the substantial acts of the claimant's usual employment, a vocational expert testified about the job opportunities that were available to the claimant, and the claimant did not demonstrate an incapacity post-injury to earn the same wages as the claimant was earning pre-injury. Hathorn v. ESCO Corp., 224 So. 3d 543, 2016 Miss. App. LEXIS 739 (Miss. Ct. App. 2016), cert. denied, 223 So. 3d 785, 2017 Miss. LEXIS 307 (Miss. 2017).

Mississippi Workers' Compensation Commission did not err in awarding an employee temporary total disability benefits and permanent partial disability benefits because it considered all the necessary factors before finding that the employee was entitled to an industrial loss, and there was no error of law or unsupported fact; the Commission found that the employee had demonstrated a loss of industrial use in excess of her functional loss. Sanderson Farms, Inc. v. Jessie, 185 So. 3d 397, 2015 Miss. App. LEXIS 373 (Miss. Ct. App.), cert. denied, 178 So. 3d 729, 2015 Miss. LEXIS 557 (Miss. 2015).

Mississippi Workers' Compensation Commission did not err in awarding an employee compensation for a fifty percent functional loss for industrial purposes of both upper extremities because substantial evidence supported its decision that the employee demonstrated a loss of industrial use in excess of her functional loss. Sanderson Farms, Inc. v. Jessie, — So. 3d —, 2015 Miss. App. LEXIS 97 (Miss. Ct. App. Mar. 3, 2015).

In a workers' compensation case, since it was uncontradicted that a benefits claimant was assigned a two percent impairment to her lower right extremity, she was entitled to receive permanent partial disability for the two percent impairment to a scheduled member, her right lower extremity, in accordance with this statute. Lovett v. Delta Reg'l Med. Ctr., 157 So. 3d 88, 2015 Miss. LEXIS 50 (Miss. 2015).

Trial court erred in upholding a 100 percent industrial loss for an employee's leg injury because the evidence did not support such a finding under Miss. Code Ann. § 71-3-17(c); the employee's leg only had a 25 percent medical impairment, the employee continued to work in the field of law enforcement, and the employee earned $ 10,000 more a year in a new position than at the time of the injury. City of Laurel v. Guy, 58 So. 3d 1223, 2011 Miss. App. LEXIS 181 (Miss. Ct. App. 2011).

15. Disability rating.

Court of Appeals erred in reversing a decision by the Workers' Compensation Commission that awarded the employee permanent-partial disability benefits because the case involved a permanent-partial disability to an employee's leg, the Commission's decision was consistent with the law governing benefits for a permanent-partial disability, and was sup-

ported by substantial evidence. Logan v. Klaussner Furniture Corp., 238 So. 3d 1134, 2018 Miss. LEXIS 126 (Miss. 2018).

Mississippi Workers' Compensation Commission properly determined that an employee was only entitled to a two-percent industrial loss of use because the employee failed to prove she suffered a disability that amounted to an industrial loss of use greater than the medical impairment percentage she was assigned by her doctor, nothing in the doctor's findings indicated that the employee's injury had produced any physical work restrictions sufficient to support a finding that she had an industrial loss of use in excess of her permanent impairment rating, the employee was actually making a higher salary now than she was pre-injury, and the employee had not received any subsequent medical treatment or any prescription medicine related to her injury. Sampson v. MTD Prods., 225 So. 3d 541, 2017 Miss. App. LEXIS 186 (Miss. Ct. App. 2017).

The medical and vocational proof rebutted any presumption as to a claimant's alleged total industrial loss of use to the right upper extremity because the claimant's post-injury employment with the employer demonstrated that the claimant could perform some of the substantial acts of the claimant's usual employment, a vocational expert testified about the job opportunities that were available to the claimant, and the claimant did not demonstrate an incapacity post-injury to earn the same wages as the claimant was earning pre-injury. Hathorn v. ESCO Corp., 224 So. 3d 543, 2016 Miss. App. LEXIS 739 (Miss. Ct. App. 2016), cert. denied, 223 So. 3d 785, 2017 Miss. LEXIS 307 (Miss. 2017).

Workers' Compensation Commission erred in finding, on remand, that an injured worker incurred a permanent-partial disability with a 60-percent industrial loss of use of her left lower extremity stemming from an admittedly work-related injury because the Commission's decision did not comport with the appellate court's findings that the injury was permanent and resulted in a loss of wage-earning capacity. Logan v. Klaussner Furniture Corp., — So. 3d —, 2016 Miss. App. LEXIS 742 (Miss. Ct. App. Nov. 15, 2016).

Workers' Compensation Commission's downward adjustment of a claimant's occupational disability, pursuant to Miss. Code Ann. § 71-3-17(c), was supported by substantial evidence because even though the claimant did suffer some occupational loss, the claimant had returned to work on a full-time basis performing work for which he was qualified and which required the use of the claimant's arms to some degree; the claimant sustained a compensable injury as a result of an indirect lightning strike while working on a land-based oil rig. Mixon v. Greywolf Drilling Co., LP, 62 So. 3d 414, 2010 Miss. App. LEXIS 671 (Miss. Ct. App. 2010).

16. Pre-existing disease or infirmity.

Administrative judge's finding that the claimant's 2007 foot injury was work-related was supported by substantial evidence showing that the prolonged standing required by the claimant's job aggravated the claimant's foot condition. Flowers v. Crown Cork & Seal United States, 168 So. 3d 1009, 2013 Miss. App. LEXIS 388 (Miss. Ct. App. 2013), aff'd on other grounds, 167 So. 3d 188, 2014 Miss. LEXIS 208 (Miss. 2014).

19. Maximum medical improvement.

Mississippi Workers' Compensation Commission erred in terminating the award of temporary total disability benefits for the claimant's foot condition as there was no finding by either podiatrist or the Commission that the claimant had reached maximum medical improvement for his injury. Flowers v. Crown Cork & Seal United States, 168 So. 3d 1009, 2013 Miss. App. LEXIS 388 (Miss. Ct. App. 2013), aff'd on other grounds, 167 So. 3d 188, 2014 Miss. LEXIS 208 (Miss. 2014).

Mississippi Workers' Compensation Commission erroneously denied permanent disability benefits for the claimant's 2007 foot injury as consideration of such benefits was premature given that the record showed that the claimant had not reached maximum medical improvement when he attempted to return to work. Flowers v. Crown Cork & Seal United States, 168 So. 3d 1009, 2013 Miss. App. LEXIS 388 (Miss. Ct. App. 2013), aff'd on other grounds, 167 So. 3d 188, 2014 Miss. LEXIS 208 (Miss. 2014).

20. Effect of receipt of disability benefits.

Although a claimant received short-term disability benefits, he was not equitably estopped from receiving workers' compensation benefits for his 2007 foot injury as the employer had not provided the court with any authority that the payment of short-term disability benefits required the denial of workers' compensation benefits. Flowers v. Crown Cork & Seal United States, 168 So. 3d 1009, 2013 Miss. App. LEXIS 388 (Miss. Ct. App. 2013), aff'd on other grounds, 167 So. 3d 188, 2014 Miss. LEXIS 208 (Miss. 2014).

RESEARCH REFERENCES

ALR.

Construction and Application of State Workers' Compensation Laws to Claim for Hearing Loss – Resulting from Single Traumatic Accident or Event. 90 A.L.R.6th 425.

§ 71-3-19. Maintenance while undergoing vocational rehabilitation.

An employee who as a result of injury is or may be expected to be totally or partially incapacitated for a remunerative occupation and who, under the direction of the commission is being rendered fit to engage in a remunerative occupation may, in the discretion of the commission under regulations adopted by it, receive additional compensation necessary for his maintenance, but such additional compensation shall not exceed Twenty-five Dollars ($25.00) a week for not more than fifty-two (52) weeks.

HISTORY: Codes, 1942, § 6998-10; Laws, 1948, ch. 354, § 8d; Laws, 1950, ch. 412, § 6; Laws, 1958, ch. 454, § 3; reenacted without change, Laws, 1982, 1980 ch 473, § 10; reenacted without change, Laws, 1990, ch. 405, § 10; Laws, 2012, ch. 522, § 5, eff from and after July 1, 2012.

Editor's Notes — Laws of 2012, ch. 522, §§ 10 and 11, provide:

"SECTION 10. The Workers' Compensation Commission shall promulgate a written statement specifying the changes made to the Workers' Compensation Law by this act to every employer in this state subject to the Workers' Compensation Law. Within ten (10) days of receipt of this written statement from the Commission, every employer shall post the Commission's statement in a conspicuous place or places in and about his place or places of business and adjacent to the Notice of Coverage as required by Section 71-3-81.

"SECTION 11. This act shall take effect and be in force from and after July 1, 2012, and shall apply to injuries occurring on or after July 1, 2012."

Amendment Notes — The 2012 amendment substituted "Twenty-five Dollars ($25.00)" for "Ten Dollars ($10.00)."

§ 71-3-21. Temporary partial disability.

JUDICIAL DECISIONS

1. In general.

Circuit court erred in dismissing the claims with prejudice where nothing in a previous Mississippi Workers' Compensation Commission decision or prior precedents foreclosed a claim for bad faith denial of temporary partial disability benefits, even if it may have been difficult to

prove bad faith. Hardaway v. Howard Indus., 211 So. 3d 718, 2016 Miss. App. LEXIS 331 (Miss. Ct. App. 2016).

Circuit court properly dismissed the employees' bad faith lawsuits against their employer and a workers' compensation administrator where the employees had filed the lawsuits prior to obtaining a final judgment that they were entitled to the workers' compensation benefits allegedly denied in bad faith. Hardaway v. Howard Indus., 211 So. 3d 718, 2016 Miss. App. LEXIS 331 (Miss. Ct. App. 2016).

Workers' Compensation Commission did not err in determining that the claimant was entitled to temporary partial disability benefits based on a difference between his pre-injury and actual post-injury wages despite the employer's evidence of fluctuations in overtime hours. Howard Indus. v. Hardaway, 191 So. 3d 1257, 2015 Miss. App. LEXIS 465 (Miss. Ct. App. 2015), cert. denied, 202 So. 3d 208, 2016 Miss. LEXIS 207 (Miss. 2016).

§ 71-3-25. Compensation for death.

If the injury causes death, the compensation shall be known as a death benefit and shall be payable in the amount and to or for the benefit of the persons following:

(a) An immediate lump-sum payment of One Thousand Dollars ($1,000.00) to the surviving spouse, in addition to other compensation benefits.

(b) Reasonable funeral expenses not exceeding Five Thousand Dollars ($5,000.00) exclusive of other burial insurance or benefits.

(c) If there be a surviving spouse and no child of the deceased, to such surviving spouse thirty-five percent (35%) of the average wages of the deceased during widowhood or dependent widowhood and, if there be a surviving child or children of the deceased, the additional amount of ten percent (10%) of such wages for each such child. In case of the death or remarriage of such surviving spouse, any surviving child of the deceased employee shall have his compensation increased to fifteen percent (15%) of such wages, provided that the total amount payable shall in no case exceed sixty-six and two-thirds percent (66-2/3%) of such wages, subject to the maximum limitations as to weekly benefits as set up in this chapter. The commission may, in its discretion, require the appointment of a guardian for the purpose of receiving the compensation of a minor dependent. In the absence of such a requirement, the appointment of a guardian for such purposes shall not be necessary, provided that if no legal guardian be appointed, payment to the natural guardian shall be sufficient.

(d) If there be a surviving child or children of the deceased but no surviving spouse, then for the support of each such child twenty-five percent (25%) of the wages of the deceased, provided that the aggregate shall in no case exceed sixty-six and two-thirds percent (66-2/3%) of such wages, subject to the maximum limitations as to weekly benefits as set up in this chapter.

(e) If there be no surviving spouse or child, or if the amount payable to a surviving spouse and to children shall be less in the aggregate than sixty-six and two-thirds percent (66-2/3%) of the average wages of the deceased, subject to the maximum limitations as to weekly benefits as set up in this chapter, then for the support of grandchildren or brothers and sisters,

if dependent upon the deceased at the time of the injury, fifteen percent (15%) of such wages for the support of each such person; and for the support of each parent or grandparent of the deceased, if dependent upon him at the time of injury, fifteen percent (15%) of such wages during such dependency. But in no case shall the aggregate amount payable under this subsection exceed the difference between sixty-six and two-thirds percent (66-⅔%) of such wages and the amount payable as hereinbefore provided to surviving spouse and for the support of surviving child or children, subject to the maximum limitations as to weekly benefits as set up in this chapter.

(f) The total weekly compensation payments to any or all beneficiaries in death cases shall not exceed the weekly benefits as set up in this chapter and shall in no case be paid for a longer period than four hundred fifty (450) weeks or for a greater amount than the multiple of four hundred fifty (450) weeks times sixty-six and two-thirds percent (66-⅔%) of the average weekly wage for the state.

(g) All questions of dependency shall be determined as of the time of the injury. A surviving spouse, child or children shall be presumed to be wholly dependent. All other dependents shall be considered on the basis of total or partial dependence as the facts may warrant.

HISTORY: Codes, 1942, § 6998-13; Laws, 1948, ch. 354, § 9; Laws, 1950, ch. 412, § 7; Laws, 1958, ch. 454, § 4; Laws, 1968, ch. 559, § 7; Laws, 1972, ch. 522, § 5; Laws, 1976, ch. 459, § 4; Laws, 1979, ch. 442, § 4; Laws, 1981, ch. 341, § 4; reenacted by Laws, 1982, ch. 473, § 13; Laws, 1984, ch. 402, § 4; Laws, 1984, ch. 499, § 2; Laws, 1988, ch. 446, § 5; reenacted without change, Laws, 1990, ch. 405, § 13; Laws, 2012, ch. 522, § 6, eff from and after July 1, 2012.

Editor's Notes — Laws of 2012, ch. 522, §§ 10 and 11, provide:

"SECTION 10. The Workers' Compensation Commission shall promulgate a written statement specifying the changes made to the Workers' Compensation Law by this act to every employer in this state subject to the Workers' Compensation Law. Within ten (10) days of receipt of this written statement from the Commission, every employer shall post the Commission's statement in a conspicuous place or places in and about his place or places of business and adjacent to the Notice of Coverage as required by Section 71-3-81.

"SECTION 11. This act shall take effect and be in force from and after July 1, 2012, and shall apply to injuries occurring on or after July 1, 2012."

Amendment Notes — The 2012 amendment substituted "One Thousand Dollars ($1,000.00)" for "Two Hundred Fifty Dollars ($250.00)" in (a); and substituted "Five Thousand Dollars ($5,000.00)" for "Two Thousand Dollars ($2,000.00)" in (b).

JUDICIAL DECISIONS

14. Denial appropriate.

Workers' Compensation Commission properly denied death and disability benefits to an employee's mother because while a physical injury occurred when a filing cabinet fell on the employee, there was overwhelming evidence that her mental decompensation was from preexisting psychological issues-not the alleged filing-cabinet injury-and led to her increased dependence on a destructive relationship, substance abuse, and ultimate death from a drug overdose. Hodges v. Heritage Props. (In re Estate of Cleaveland), 150

So. 3d 735, 2014 Miss. App. LEXIS 326 (Miss. Ct. App.), cert. denied, 150 So. 3d 708, 2014 Miss. LEXIS 564 (Miss. 2014).

§ 71-3-31. Determination of wages.

JUDICIAL DECISIONS

1. In general.

Workers' Compensation Commission erred in computing an employee's disability benefits because such wages were statutorily required to be based on "actual earnings before injury with the earning capacity after injury," the parties stipulated that the employee's average weekly wage was $645.40, which included regular overtime, such that the employee was entitled to $191.33 per week for 450 weeks rather than the $132.40 arrived at by the Commission, which failed to use the employee's overtime in calculating his pre-injury hourly wage. Nixon v. Howard Indus., 249 So. 3d 1088, 2018 Miss. App. LEXIS 298 (Miss. Ct. App. 2018).

Workers' Compensation Commission did not err in calculating a claimant's average weekly wage because Miss. Code Ann. § 71-3-31 did not literally apply given the claimant's unique work schedule while employed in the oil field industry; the claimant worked in a two-week block of time, comprised of a seven-days-on, seven-days-off, twelve-hours-a-day work schedule. Mixon v. Greywolf Drilling Co., LP, 62 So. 3d 414, 2010 Miss. App. LEXIS 671 (Miss. Ct. App. 2010).

§ 71-3-35. Limitation.

JUDICIAL DECISIONS

ANALYSIS

1. In general.
2. When period commences.
4. Statutory bar, generally.
10. Estoppel.
11. Tolling.

1. In general.

Employer's receipt-of-payment acknowledgment form, which had to be submitted daily by a worker and included a disclaimer that the worker had not sustained any work-related injuries on that day, did not violate public policy requiring a claim of a work-related injury be submitted within thirty days after the injury. Furthermore, the employer presented evidence that payment was not contingent upon the employee signing the receipt-of-payment acknowledgment form. Barnes v. LFI Fort Pierce, Inc., 238 So. 3d 7, 2018 Miss. App. LEXIS 52 (Miss. Ct. App. 2018).

2. When period commences.

Employer's continued payment of an injured employee's wages although he performed little or no work constituted payment of wages in lieu of workers' compensation benefits, thereby waiving the requirement of a formal claim and tolling the statute of limitations, Miss. Code Ann. § 71-3-35(1). Ladner v. Zachry Constr., 130 So. 3d 1085, 2014 Miss. LEXIS 66 (Miss. 2014).

Workers' compensation claim was time-barred because there was substantial evidence to support the Mississippi Workers' Compensation Commission's finding that the statute of limitations began to run when an orthopedic surgeon, on referral from the claimants' primary-care physician, diagnosed the claimant with carpal tunnel syndrome as the claimant's injury then became reasonably apparent and was more clearly found to be work related. Brown v. Ill. Tool Works, Inc., 135 So. 3d 160, 2013 Miss. App. LEXIS 486 (Miss. Ct. App. 2013), cert. denied, 136 So. 3d 437, 2014 Miss. LEXIS 188 (Miss. 2014).

4. Statutory bar, generally.

Because the claimants did not apply for

workers' compensation benefits within two years of their injuries, their claims were time-barred by the statute of limitations, in that the statute of limitations was not tolled and the employer was not estopped from asserting the statute of limitations as a defense. McInturff v. Yellow Ry. Corp., — So. 3d —, 2019 Miss. App. LEXIS 169 (Miss. Ct. App. Apr. 23, 2019), cert. denied, 283 So. 3d 733, 2019 Miss. LEXIS 427 (Miss. 2019), cert. denied, — So. 3d —, 2019 Miss. LEXIS 467 (Miss. 2019).

Regardless of the date chosen, the claimant failed to submit her carpal-tunnel and ulnar-neuropathy claims within the two-year statute of limitations set forth in Miss. Code Ann. § 71-3-35, barring these claims and any claims arising directly out of them, including herregional-pain-syndrome claim. Further, the claimant was aware of work-related depression over two-years before she filed her claim for depression. Johnson v. City of Jackson, 211 So. 3d 767, 2016 Miss. App. LEXIS 447 (Miss. Ct. App. 2016).

Substantial evidence supported the Commission's finding that an employee's claim was barred by the two-year statute of limitations contained in the Worker's Compensation Act, Miss. Code Ann. § 71-3-35(1) and that the employee's salary failed to constitute wages in lieu of compensation; because nothing in the record showed that the employee's physicians restricted him from working, and the employer insisted that it did not pay the employee his wages in recognition of a compensable disability, but rather in return for work he performed. Ladner v. Zachry Constr. & Zurich Am. Ins. Co., 130 So. 3d 1121, 2013 Miss. App. LEXIS 257 (Miss. Ct. App. 2013), rev'd, 130 So. 3d 1085, 2014 Miss. LEXIS 66 (Miss. 2014).

Firefighter's claim for workers' compensation benefits was not barred by the two-year statute of limitations period because he was not reasonably aware of the compensable nature of his latent asbestos-related respiratory disease at any time prior to the year he in which he filed his claim. City of Jackson v. Sandifer, 125 So. 3d 681, 2013 Miss. App. LEXIS 703 (Miss. Ct. App. 2013).

10. Estoppel.

Because the claimants did not apply for workers' compensation benefits within two years of their injuries, their claims were time-barred by the statute of limitations. Moreover, the employer was not estopped from asserting the statute of limitations as a defense in that the employer did not misrepresent the claimants' rights to benefits, or fail to timely file notice of the claimants' injury under the reporting statute. McInturff v. Yellow Ry. Corp., — So. 3d —, 2019 Miss. App. LEXIS 169 (Miss. Ct. App. Apr. 23, 2019), cert. denied, 283 So. 3d 733, 2019 Miss. LEXIS 427 (Miss. 2019), cert. denied, — So. 3d —, 2019 Miss. LEXIS 467 (Miss. 2019).

Employer and an insurance carrier did not waive the statute of limitations because of their failure immediately to pursue a hearing on the defense and their substantial participation in discovery and litigation for three years, nor did the doctrine of equitable estoppel apply to the case because the claimant was never misled by the employer about workers' compensation benefits Brown v. Ill. Tool Works, Inc., 135 So. 3d 160, 2013 Miss. App. LEXIS 486 (Miss. Ct. App. 2013), cert. denied, 136 So. 3d 437, 2014 Miss. LEXIS 188 (Miss. 2014).

11. Tolling.

Because the claimants did not apply for workers' compensation benefits within two years of their injuries, their claims were time-barred by the statute of limitations. Moreover, the statute of limitations was not tolled because the sick and vacation pay which the claimants received were not wages in lieu of compensation. McInturff v. Yellow Ry. Corp., — So. 3d —, 2019 Miss. App. LEXIS 169 (Miss. Ct. App. Apr. 23, 2019), cert. denied, 283 So. 3d 733, 2019 Miss. LEXIS 427 (Miss. 2019), cert. denied, — So. 3d —, 2019 Miss. LEXIS 467 (Miss. 2019).

Claimant's untimely filed workers' compensation claim was not saved by her employer's filing of a Form B-52 Notice of Controversion; a Form B-52 was not an application for benefits, and therefore, contrary to the claimant's assertion, it did not toll the statute of limitations. McKinney v. Univ. of Mississippi Med. Ctr., 110 So. 3d 332, 2013 Miss. App. LEXIS 80 (Miss. Ct. App. 2013).

§ 71-3-37. Payment of compensation.

JUDICIAL DECISIONS

ANALYSIS

1. In general.
9. Notice as to closing of case.
10. Lump sum payments.

1. In general.

Where an employee asserted an action against a worker's compensation insurer because of the insurer's intentional bad-faith refusal to pay worker's compensation when due, Mississippi law applied because, inter alia, an insurer's intentional bad-faith refusal to pay worker's compensation timely is an independent tort committed by the insurer outside of the scope of the worker's employment and it is legally distinct from and independent of any claims arising under the Mississippi Workers' Compensation Act, and Mississippi had the most significant relationship to the intentional tort suit. Williams v. Liberty Mut. Ins. Co., 741 F.3d 617, 2014 U.S. App. LEXIS 1726 (5th Cir. Miss. 2014).

9. Notice as to closing of case.

Workers' Compensation Commission erred in determining that an employee's petition to controvert was timely because his employer and its workers' compensation insurer complied with the statutory requirements by twice mailing the employee a Form B-31, providing him an opportunity to sign the Form, and informing him of the time limitations, and upon his failure to sign and return the Form, they provided him with notice, via certified mail, that an unsigned Form had been filed with the Commission. Leggett & Platt v. Brinkley, 150 So. 3d 106, 2014 Miss. App. LEXIS 576 (Miss. Ct. App. 2014).

10. Lump sum payments.

Denial of a workers' compensation claimant's motion to disregard the Miss. Code Ann. § 71-3-37(10) requirement of using a mortality table to determine the present value of future compensation payments for making a lump-sum payment was proper as the statute was mandatory as it used the word "shall" and plainly required that the probability of the death of the claimant be determined using validated actuarial tables or factors; even though the claimant had outlived his usual life expectancy, the probability of the happening of any other contingency affecting the amount or duration of the compensation had to be disregarded. Brock v. Wal-Mart #1260, 105 So. 3d 1151, 2012 Miss. App. LEXIS 806 (Miss. Ct. App. 2012).

§ 71-3-45. Compensation a lien against assets.

JUDICIAL DECISIONS

ANALYSIS

1. In general.
2. Statutory Lien.

1. In general.

Creditor, apparently relying on Miss. Code Ann. § 71-3-45, contended that he held a statutory lien against debtor, and, in this context, asserted that debtor should have filed a complaint to avoid his statutory lien while the bankruptcy case was being administered. The problem with his reasoning was five-fold, to-wit: (1) debtor disputed that the creditor was entitled to compensation under the Worker's Compensation Act, (2) there was never an adjudication in the state court worker's compensation proceeding that the creditor was entitled to a claim against debtor in any amount; as such, there was no determination that the creditor was entitled to compensation under the provisions of the Worker's Compensation Act, and, because of this, he did not have a lien against any assets owned by debtor, (3) even if there

had been an adjudication that the creditor was entitled to compensation in a liquidated amount which, in effect, would have been a judgment in his favor, debtor owned no unencumbered, non-exempt assets to which the judgment lien could attach, (4) because the creditor had not filed a complaint objecting to the dischargeability of his debt or objecting to debtor's bankruptcy discharge in general, the creditor's claim inevitably was going to be discharged as a result of debtor's Chapter 7 filing, and (5) because there was no lien of any description in favor of the creditor against debtor during the time that this bankruptcy case was being administered, there was no reason whatsoever for debtor to file a motion or a complaint to avoid the lien. In re Parkerson, 2010 Bankr. LEXIS 4597 (Bankr. N.D. Miss. Dec. 13, 2010).

2. Statutory Lien.

Because an employer disputed that an employee was entitled to compensation, and because there was never an adjudication that the employee was entitled to a claim against the employer in any amount, the employee did not have a statutory lien, as defined by 11 U.S.C.S. § 101(53), under Miss. Code Ann. § 71-3-45 against the employer's bankruptcy assets. Sanders v. Parkerson, 2011 U.S. Dist. LEXIS 18492 (N.D. Miss. Feb. 24, 2011).

§ 71-3-47. Determination for claims for compensation.

JUDICIAL DECISIONS

ANALYSIS

1. In general.
11. Timeliness of petition.

1. In general.

There was substantial evidence to support the decision of the Mississippi Workers' Compensation Commission to affirm the administrative law judge's (AJ) decision to deny an employee disability benefits because the AJ, acting under the authority of the Commission, was entitled to rely on his personal experience in making reasonable inferences and in his determination to deny benefits. Sterling v. Eaton Corp., 109 So. 3d 1096, 2013 Miss. App. LEXIS 130 (Miss. Ct. App. 2013).

11. Timeliness of petition.

Case presented a set of unique facts under which the claimant's notice of appeal should be considered timely as the claimant's counsel withdrew on last day that she could have filed her notice of appeal, and the administrative judge clearly determined that fairness required an extension of time for the claimant to prosecute her claim. Felter v. Floorserv, Inc., 140 So. 3d 426, 2013 Miss. LEXIS 293 (Miss. 2013).

Denial of the employee's petition for his workers' compensation claim to be reinstated was appropriate because he failed to timely file a petition to reinstate with the Workers' Compensation Commission and the actions taken during the statute-of-limitations period were insufficient to toll the one-year period. Cook v. Home Depot & Am. Home Assur. Co., 81 So. 3d 1126, 2011 Miss. App. LEXIS 18 (Miss. Ct. App. 2011), aff'd, 81 So. 3d 1041, 2012 Miss. LEXIS 70 (Miss. 2012).

§ 71-3-51. Court review of compensation award.

JUDICIAL DECISIONS

1. In general.

Appellate court had jurisdiction of a workers' compensation appeal despite an administrative judge's failure to decide an employer's motion to reconsider because (1) the Mississippi Workers' Compensation Commission's (Commission) ruling was reviewable under Miss. Code Ann. § 71-3-51, as the Commission had jurisdiction once a claim was filed, and (2)

there were no more remedies to exhaust once the Commission ruled. Hamilton v. Southwire Co., 191 So. 3d 1275, 2016 Miss. App. LEXIS 264 (Miss. Ct. App. 2016).

Court of appeals erred in reversing an order granting an employer's motion for summary judgment in a widow's action alleging bad faith for failing to timely pay workers' compensation benefits because the Mississippi Workers' Compensation Commission's final judgment affirming an administrative law judge's order awarding the widow benefits marked the end of its involvement in the case, and since the widow's suit was filed more than three years later, it was time-barred under the general three-year statute of limitations, Miss. Code Ann. § 15-1-49; the plain language of Miss. Code Ann. § 71-3-51 provided that "the final award of the Commission shall be conclusive and binding unless either party shall appeal," and since no party appealed the Commission's decision, the "unless" qualifier was irrelevant, and according to the statute's very specific, unambiguous language, the Commission's award was "final" and "conclusive and binding." Harper v. Cal-Maine Foods, Inc., 43 So. 3d 401, 2010 Miss. LEXIS 307 (Miss. 2010).

§ 71-3-53. Continuing jurisdiction of the commission.

JUDICIAL DECISIONS

ANALYSIS

1. In general.
2. Redetermination after review.
3. Limitations period, generally.
4. —After closing of case.
6. — After dismissal of claim.

1. In general.

Mississippi Workers' Compensation Commission did not abuse its discretion by declining to reopen a claimant's case based on evidence that could have been produced at the original hearing as the evidence submitted in support of the motion to reopen did not disprove the finding of the original decision that the claimant deviated from the course and scope of the claimant's employment to engage in a road rage incident with a motorist. Huey v. RGIS Inventory Specialists & Fid. & Guar. Ins. Co., 269 So. 3d 362, 2018 Miss. App. LEXIS 196 (Miss. Ct. App.), cert. denied, 258 So. 3d 286, 2018 Miss. LEXIS 522 (Miss. 2018).

2. Redetermination after review.

Workers' Compensation Commission properly denied an employee's request to re-open her claim four months after it was settled through mediation because the employee did not make any arguments in support of a change in circumstance regarding her injuries or a mistake in determination of fact regarding her settlement and nothing in the record indicated the administrative judge forced the employee into mediation or erred in accepting the settlement agreement provided by the employee and the employer. Wright v. Minact Logistical Servs., LLC, 254 So. 3d 858, 2018 Miss. App. LEXIS 211 (Miss. Ct. App.), cert. denied, 254 So. 3d 171, 2018 Miss. LEXIS 411 (Miss. 2018).

Workers' Compensation Commission erred in granting an employer's motion to reopen and in vacating its prior order approving the parties' settlement because, while the employee died after signing the settlement and before it was approved by the Commission, there was no dispute that there was a meeting of the minds prior to his death and the employer did not show how the employee's death after the settlement was signed by the parties and submitted to the Commission, had any bearing on the issue of whether the mistake of fact (the Commission's assumption that the employee was still alive when it approved the settlement) related to a valid reason for setting aside the settlement. Taylor v. Reliance Well Serv., 220 So. 3d 260, 2017 Miss. App. LEXIS 296 (Miss. Ct. App. 2017).

Reversal of Workers' Compensation Commission's denial of a former employer's motion to discharge its obligation to pay a former worker's asthma related

medical expenses was errer because the employer failed to show that its medical expert based his conclusion that the asthma was not caused by the worker's employment on evidence that was not available to the employer at the original compensation determination. Jackson v. GSX Polymers, Inc., 107 So. 3d 1049, 2013 Miss. App. LEXIS 18 (Miss. Ct. App. 2013).

Mississippi Worker's Compensation Commission did not err in failing to reopen a claim because there was no merit to the claimant's assertion that there was a mistake in a determination of fact regarding the Commission not having the claimant's address or the claimant failing to pursue the claim for workers' compensation benefits. Rea v. Foamex, 133 So. 3d 855, 2013 Miss. App. LEXIS 523 (Miss. Ct. App. 2013), cert. denied, 133 So. 3d 818, 2014 Miss. LEXIS 151 (Miss. 2014).

3. Limitations period, generally.

4. —After closing of case.

Claimant filed as motion to reopen within the one-year statute of limitations because, as there was an appeal from a final judgment of the Mississippi Workers' Compensation Commission, the claim was not finally rejected, and the statute of limitations did not begin to run, until a final mandate was issued from the appeals process. Huey v. RGIS Inventory Specialists & Fid. & Guar. Ins. Co., 269 So. 3d 362, 2018 Miss. App. LEXIS 196 (Miss. Ct. App.), cert. denied, 258 So. 3d 286, 2018 Miss. LEXIS 522 (Miss. 2018).

Workers' Compensation Commission erred in denying a worker's request to reopen her case as untimely because, while almost a decade had passed since the worker received her final disability payment, the one-year statutory period had not yet been "triggered" where the worker filed her motion to reopen prior to one year after her final compensation payment and the Commission never considered whether the worker established by a preponderance of the evidence that her conditions had changed. Smith v. CompFirst/L.C. Indus., 186 So. 3d 873, 2015 Miss. App. LEXIS 391 (Miss. Ct. App. 2015), cert. denied, 186 So. 3d 854, 2016 Miss. LEXIS 114 (Miss. 2016).

Workers' Compensation Commission erred in determining that an employee's petition to controvert was timely because his employer and its workers' compensation insurer complied with the statutory requirements by twice mailing the employee a Form B-31, providing him an opportunity to sign the Form, and informing him of the time limitations, and upon his failure to sign and return the Form, they provided him with notice, via certified mail, that an unsigned Form had been filed with the Commission. Leggett & Platt v. Brinkley, 150 So. 3d 106, 2014 Miss. App. LEXIS 576 (Miss. Ct. App. 2014).

Denial of the employee's petition for his workers' compensation claim to be reinstated was appropriate because he failed to timely file a petition to reinstate with the Workers' Compensation Commission and the actions taken during the statute-of-limitations period were insufficient to toll the one-year period. Cook v. Home Depot & Am. Home Assur. Co., 81 So. 3d 1126, 2011 Miss. App. LEXIS 18 (Miss. Ct. App. 2011), aff'd, 81 So. 3d 1041, 2012 Miss. LEXIS 70 (Miss. 2012).

6. — After dismissal of claim.

When a workers' compensation claim is dismissed because the claimant fails to file a prehearing statement, the claimant has one year from the day that the order of dismissal becomes final in which to move to reopen. Therefore, it was proper to deny a claimant's motion to reopen a workers' compensation case because it was untimely filed more than 20 months after the dismissal became final. Gaillard v. N. Benton Cnty. Health Care, 180 So. 3d 842, 2015 Miss. App. LEXIS 649 (Miss. Ct. App. 2015).

§ 71-3-55. Procedure before the commission.

JUDICIAL DECISIONS

3. Evidence.

Mississippi Workers' Compensation Commission did not abuse its discretion by excluding a vocational report because the vocational expert had passed away by the time of the evidentiary hearing and the claimant had another vocational expert testify on her behalf and introduced that expert's report into evidence. Hayes v. Howard Indus., 284 So. 3d 787, 2019 Miss. App. LEXIS 369 (Miss. Ct. App. 2019).

Mississippi Workers' Compensation Commission did not commit any reversible error by quashing a subpoena issued to a doctor and by failing to record and transcribe the hearing on the issue because the only "hearings" on the employee's subpoena were a telephonic conference with the administrative judge and oral argument on his petition for review by the full Commission; no testimony or other evidence was received during either "hearing." Wright v. Turan-Foley Motors, Inc., 269 So. 3d 160, 2018 Miss. App. LEXIS 35 (Miss. Ct. App. 2018).

§ 71-3-59. Costs in proceedings brought without reasonable ground; penalties for pursuit of frivolous claim.

Cross References — Deposit of civil penalties collected under this chapter to be paid into State General Fund, see § 71-3-97.

JUDICIAL DECISIONS

ANALYSIS

1. Penalties or interest.
2. Sanctions.

1. Penalties or interest.

Administrative judge's finding that, although there were inferences throughout the medical records of possible misrepresentation by a claimant, the case was not an appropriate case for the imposition of penalties or interest, because the weight of the evidence did not substantiate this fact, was supported by substantial evidence. Blackwell v. Howard Indus., 243 So. 3d 774, 2018 Miss. App. LEXIS 43 (Miss. Ct. App. 2018).

2. Sanctions.

Because the claimant's counsel was not obligated to do anything further under the Mississippi Workers' Compensation Commission's procedural rules once the claimant's motion to reinstate his claim was timely filed, imposing the $500 sanction for unreasonable delay was inappropriate because there was no breach of an affirmative duty on the part of counsel in not requesting a hearing on the motion to reinstate. Minor v. RGT Mgmt., 271 So. 3d 644, 2018 Miss. App. LEXIS 578 (Miss. Ct. App. 2018).

Mississippi Workers' Compensation Commission erred by imposing sanctions on an employee's attorney for the subpoena that the attorney served on a doctor and his deposition questioning of the doctor because the possible financial bias of the doctor and his compensation in the litigation were relevant matters the attorney sought to explore by subpoena and deposition; no rules or reported cases clearly prohibited the conduct for which the Commission imposed sanctions. Wright v. Turan-Foley Motors, Inc., 269 So. 3d 160, 2018 Miss. App. LEXIS 35 (Miss. Ct. App. 2018).

Administrative judge's finding that, although there were inferences throughout the medical records of possible misrepresentation by a claimant, the case was not an appropriate case for the imposition of penalties or interest, because the weight of the evidence did not substantiate this fact, was supported by substantial evidence. Blackwell v. Howard Indus., 243

So. 3d 774, 2018 Miss. App. LEXIS 43 (Miss. Ct. App. 2018).

§ 71-3-61. Procedural authority of the commission.

JUDICIAL DECISIONS

3. Admission of additional evidence. Mississippi Workers' Compensation Commission did not err in denying the motion of the Mississippi Department of Agriculture and Commerce to correct the record and admit additional evidence because substantial evidence supported the Commission's finding that the Department failed to sufficiently explain its tardiness in producing the evidence. Dep't of Agric. v. Austin, 150 So. 3d 994, 2014 Miss. App. LEXIS 649 (Miss. Ct. App. 2014).

§ 71-3-63. Fees for legal and other services.

(1) No claim for legal services or for any other services rendered in respect of a claim or award for compensation, to or on account of any person, shall be valid unless approved by the commission or, if proceedings for review of the order of the commission in respect of such claim or award are had before any court, unless approved by such court. Any claim so approved shall, in the manner and to the extent fixed by the commission or such court, be a lien upon such compensation.

(2) Any person (a) who receives any fee, other consideration, or any gratuity on account of services so rendered, unless such consideration or gratuity is approved by the commission or such court, or (b) who makes it a business to solicit employment for a lawyer or for himself in respect of any claim or award for compensation, shall be guilty of a misdemeanor and, upon conviction thereof, shall for each offense be punished by a fine of not more than One Thousand Dollars ($1,000.00) or by imprisonment not to exceed one (1) year, or by both such fine and imprisonment.

(3) Representation of one other than himself or herself before the commission shall be considered the practice of law, and all statutes applying to and regulating the practice in all other courts of law in this state shall likewise apply to practice before the commission, insofar as the qualifications of those practicing before the commission are concerned. This paragraph shall not be construed as tightening the rules of evidence which are otherwise relaxed in other sections of this chapter.

In no instance shall the amount recovered by an attorney for an appearance before the commission exceed twenty-five percent (25%) of the total award of compensation. Such limitations, however, shall not be construed as applying to a fee awarded for additional services by any superior court. Legal services rendered where no motion to controvert has been filed by either employer or employee shall be considered as consultation, and that factor shall be taken into consideration in awarding a fee. Attorneys may not recover attorney's fees based upon benefits voluntarily paid to an injured employee for temporary or permanent disability. Any settlement negotiated by an attorney shall not be

considered a voluntary payment. In all instances, fees shall be awarded on the basis of fairness to both attorney and client. Although exceptions may be made in the interest of justice, it shall be deemed conducive to the best interest of all concerned for the commission to approve contracts for attorney's fees voluntarily entered into between attorney and client, within the limitations hereinabove set out.

When an award of compensation becomes final and an attorney's fee is outstanding, a partial lump-sum settlement sufficient to cover the attorney's fee approved therein by the commission shall be made immediately, from payments last to become due, and the deductions allowed by the law shall be borne equally by the attorney and the client.

HISTORY: Codes, 1942, § 6998-32; Laws, 1948, ch. 354, § 26; Laws, 1950, ch. 412, § 12; reenacted without change, Laws, 1982, ch. 473, § 32; reenacted without change, Laws, 1990, ch. 405, § 33; Laws, 2012, ch. 522, § 7, eff from and after July 1, 2012.

Editor's Notes — Laws of 2012, ch. 522, §§ 10 and 11, provide:

"SECTION 10. The Workers' Compensation Commission shall promulgate a written statement specifying the changes made to the Workers' Compensation Law by this act to every employer in this state subject to the Workers' Compensation Law. Within ten (10) days of receipt of this written statement from the Commission, every employer shall post the Commission's statement in a conspicuous place or places in and about his place or places of business and adjacent to the Notice of Coverage as required by Section 71-3-81.

"SECTION 11. This act shall take effect and be in force from and after July 1, 2012, and shall apply to injuries occurring on or after July 1, 2012."

Amendment Notes — The 2012 amendment added the fourth and fifth sentences in the second paragraph in (3).

§ 71-3-67. Reports of injuries.

JUDICIAL DECISIONS

ANALYSIS

1. In general.
2. Miscellaneous.

1. In general.

Because the claimants did not apply for workers' compensation benefits within two years of their injuries, their claims were time-barred by the statute of limitations. Moreover, the employer was not estopped from asserting the statute of limitations as a defense in that the employer did not fail to timely file notice of the claimants' injury under the reporting statute. McInturff v. Yellow Ry. Corp., — So. 3d —, 2019 Miss. App. LEXIS 169 (Miss. Ct. App. Apr. 23, 2019), cert. denied, 283 So. 3d 733, 2019 Miss. LEXIS 427 (Miss. 2019), cert. denied, — So. 3d —, 2019 Miss. LEXIS 467 (Miss. 2019).

2. Miscellaneous.

Doctrines of quasi-estoppel and equitable estoppel did not bar a company from denying that a worker was an independent contractor because the worker failed to articulate how he relied to his detriment on any representation by the company to show that it took inconsistent positions and that the company benefitted from any inconsistent position; the company's failure to file a timely notice of the worker's injury did not estop it from raising the exclusive remedy provision as a defense. Fortner v. Specialty Contr., LLC, 217 So. 3d 736, 2017 Miss. App. LEXIS 54 (Miss. Ct. App. 2017).

§ 71-3-71. Compensation for injuries where third parties are liable.

The acceptance of compensation benefits from or the making of a claim for compensation against an employer or insurer for the injury or death of an employee shall not affect the right of the employee or his dependents to sue any other party at law for such injury or death, but the employer or his insurer shall be entitled to reasonable notice and opportunity to join in any such action or may intervene therein. If such employer or insurer join in such action, they shall be entitled to repayment of the amount paid by them as compensation and medical expenses from the net proceeds of such action (after deducting the reasonable costs of collection) as hereinafter provided.

The commencement of an action by an employee or his dependents (or legal representative) against a third party for damages by reason of the injury, or the adjustment of any such claim, shall not affect the right of the injured employee or his dependents (or legal representative) to recover compensation, but any amount recovered by the injured employee or his dependents (or legal representative) from a third party shall be applied as follows: reasonable costs of collection as approved and allowed by the court in which such action is pending, or by the commission of this state in case of settlement without suit, shall be deducted; the remainder, or so much thereof as is necessary, shall be used to discharge the legal liability of the employer or insurer; and any excess shall belong to the injured employee or his dependents. The employee or his dependents bringing suit against the third party must notify the employer or carrier within fifteen (15) days of the filing of such suit.

An employer or compensation insurer who shall have paid compensation benefits under this chapter for the injury or death of the employee shall have the right to maintain an action at law against any other party responsible for such injury or death, in the name of such injured employee or his beneficiaries, or in the name of such employer or insurer, or any or all of them. If reasonable notice and opportunity to be represented in such action by counsel shall have been given to the compensation beneficiary, all claims of such compensation beneficiary shall be determined in such action, as well as the claim of the employer or insurer. If recovery shall be had against such other party, by suit or otherwise, the compensation beneficiary shall be entitled to any amount recovered over and above the amount that the employer and insurer shall have paid or are liable for in compensation or other benefits, after deducting the reasonable costs of collection.

In case of settlement of any action before the trial thereof, such settlement shall be subject to the approval of the court wherein such action is pending, and settlement before an action is brought shall be subject to the approval of the commission. Distribution of the portion belonging to the dependents shall be made among such dependents in the manner provided in this chapter.

In case of liability of the employer or insurer to make payment to the state treasury under the second injury fund provisions, if the injury or death creates a legal liability against a third party, the employer or insurer shall have a right

of action against such third party for reimbursement of any sum so paid into the state treasury, which right may be enforced in the action heretofore provided or by an independent action.

HISTORY: Codes, 1942, § 6998-36; Laws, 1948, ch. 354, § 30; reenacted without change, Laws, 1982, ch. 473, § 36; reenacted without change, Laws, 1990, ch. 405, § 38, eff from and after July 1, 1990.

Editor's Notes — The name of the Second Injury Fund, referenced in the last paragraph, was changed to the Second Injury Trust Fund by Section 27 of Chapter 7, 2017 1st Extraordinary Session, effective June 23, 2017.

JUDICIAL DECISIONS

3. Parties to action.

Owner of a petroleum refinery plant was not immune from a negligence action filed by a contractor's employee, and thus, it was subject to the employee's tort claim as "any other party," because it was not statutory employer of the employee; the owner had no duty as an employer or contractor to secure workers' compensation insurance, and its act of voluntarily purchasing coverage did not change its status. Thomas v. Chevron U.S.A., Inc., 212 So. 3d 58, 2017 Miss. LEXIS 27 (Miss. 2017).

With respect to an employer's or workers' compensation insurer's right to subrogation, Miss. Code Ann. § 71-3-71 allows them to either join or intervene in a third party action filed by an injured worker, and either will suffice to protect the insurer's or employer's right to reimbursement. Liberty Mut. Ins. Co. v. Shoemake, 111 So. 3d 1207, 2013 Miss. LEXIS 190 (Miss. 2013).

Workers' compensation insurer could not file a separate subrogation action under Miss. Code Ann. § 71-3-71 against an injured worker after he settled a third-party action in Alabama and reimbursed the insurer only the amount it was entitled to under Alabama law, as the insurer had notice of the action but did not join or intervene in that suit. Liberty Mut. Ins. Co. v. Shoemake, 111 So. 3d 1207, 2013 Miss. LEXIS 190 (Miss. 2013).

§ 71-3-73. Second Injury Trust Fund.

(1) If an employee who has previously lost, or lost the use of, one (1) hand, one (1) arm, one (1) foot, one (1) leg, or one (1) eye, becomes permanently and totally incapacitated through the loss, or loss of use, of another member or organ, the employer shall be liable only for the compensation payable for such second injury. In addition to such compensation and after the completion of the payment therefor, the employee shall be paid the remainder of the compensation that would be due for permanent total incapacity, out of a special fund known as the "Second Injury Trust Fund," and created for such purpose in the following manner:

In every case of compensable death of an employee under this chapter, the employer or, if insured, his insurance carrier shall pay to the commission the sum of Three Hundred Dollars ($300.00) except in cases where there is no dependency, then there shall be paid to the commission the sum of Five Hundred Dollars ($500.00) to be deposited with the State Treasurer for the benefit of said fund. A suspension of said payments of Three Hundred Dollars ($300.00) per death shall be made when the total amount of all such payments,

together with the accumulated interest thereon, equals or exceeds Three Hundred Fifty Thousand Dollars ($350,000.00), and no further contributions to said fund shall be made except in cases where there is no dependency. Whenever, thereafter, the amount of such sum shall be reduced below One Hundred Fifty Thousand Dollars ($150,000.00) by reason of payments made pursuant to this section, then such contributions of Three Hundred Dollars ($300.00) per death shall be resumed forthwith and shall continue until such sum, together with accumulated interest thereon, shall again amount to Three Hundred Fifty Thousand Dollars ($350,000.00); and the commission shall direct the distribution thereof.

(2) During fiscal year 2017 and thereafter, the Workers' Compensation Commission shall have full authority to assess employers or insurers the amounts provided in this section for deposit into the Second Injury Trust Fund, however, such funds shall not be used for the support of the agency.

HISTORY: Codes, 1942, § 6998-37; Laws, 1948, ch. 354, § 31; Laws, 1956, ch. 345, § 1; Laws, 1960, ch. 278; reenacted without change, Laws, 1982, ch. 473, § 37; Laws, 1983, ch. 497, § 1; Laws, 1987, ch. 361, § 6; reenacted without change, Laws, 1990, ch. 405, § 39; Laws 2017, 1st Ex Sess, ch. 7, § 27, eff from and after passage (approved June 23, 2017).

Amendment Notes — The 2017 amendment, effective June 23, 2017, inserted "Trust" near the end of the first paragraph of (1); and added (2).

§ 71-3-75. Security for payment of compensation.

JUDICIAL DECISIONS

3. Self-insurer.

Workers' Compensation Group Self-Insurer Guaranty Association (GGA) had the authority to assess the Mississippi Manufacturers Association Workers' Compensation Group because the assessment was levied within three years of its withdrawal from the GGA; therefore, the assessment was consistent with the GGA's plan of operation and was a valid exercise of the Workers' Compensation Commission's regulatory authority under the Workers' Compensation Self-insurer Guaranty Association Law. Miss. Mfrs. Ass'n Workers' Comp. Grp. v. Miss. Workers' Comp. Group Self-Insurer Guar. Ass'n, 281 So. 3d 108, 2019 Miss. App. LEXIS 45 (Miss. Ct. App. 2019).

§ 71-3-77. Insurance policy regulations.

(1) Every contract for the insurance of the compensation herein provided, or against liability therefor, shall be deemed to be made subject to the provisions of this chapter, and provisions thereof inconsistent with this chapter shall be void. Such contract shall be allowed to offer deductibles on all liability of the assured under and according to the provisions of this chapter, notwithstanding any agreement of the parties to the contrary. However, the payments of the claims, including the deductible amounts, shall be made directly from the insurance company to the employee, except for medical benefits which shall be paid to the medical provider. A copy of such payments shall be forwarded to the employer. The insurance company shall collect the deductible

from the employer as shall be provided in the contract between the employer and the insurer. No such policy shall be subject to nonrenewal, or cancelled by the insurer within the policy period, until a notice in writing shall be given to the commission and to the insured, fixing the date on which it is proposed to cancel it or declaring that the company does not intend to renew the policy upon expiration date. Notice to the insured shall be served personally or by registered or certified mail. Notice to the commission shall be provided in such manner and on such form as the commission may prescribe or direct. No such cancellation or nonrenewal shall be effective until thirty (30) days after the service of such notice on the insured and the provision of notice to the commission, unless the employer has obtained other insurance coverage, in which case such policy shall be deemed cancelled as of the effective date of such other insurance, whether or not such notice has been given. The notice requirements of this section shall not apply when a replacement policy form providing the same or substantially similar coverage is issued by the same insurer, or when transfer of an insured to a licensed affiliate providing the same or substantially similar coverage occurs. Whenever a replacement policy form providing the same or substantially similar coverage is issued by the same insurer, or when a transfer of an insured to a licensed affiliate of the insurer providing the same or substantially similar coverage occurs, documents signed by the insured are applicable to the replacement policy and to coverage being transferred, and remain valid and enforceable.

The insured may also cancel such a policy on the day that the insured either (a) returns the policy to the agent, or (b) signs and delivers to the agent a "lost policy release." If the insured desires to cancel a policy before the policy has become effective, he may cancel the policy by written notice of cancellation to the agent or company without return of the policy or a release.

Whenever a replacement policy form providing the same or substantially similar coverage is issued by the same insurer, or by a licensed affiliate insurer, such insurer shall mail or deliver to the policyholder, at least thirty (30) days in advance of the effective date of renewal, written notice of any terms or conditions that are less favorable to the policyholder.

A transferring insurer shall notify the Mississippi Insurance Department and the Mississippi Workers' Compensation Commission at least forty-five (45) days in advance of notifying a policyholder that its personal or commercial lines insurance policies will be transferred to another licensed insurer within the same insurance group or same holding company. The notice shall include the name of insurer transferring the personal or commercial lines policies and the name and financial rating of the insurer receiving the transferred personal or commercial lines policies.

A transferring insurer shall provide the policyholder written notice of the policy transfer at least thirty (30) days prior to expiration of the policy term and shall include the financial rating of the insurer receiving the transferred policy. Such notice must be provided to the policyholder with the notice of renewal premium at least thirty (30) days before the effective date of the transfer.

(2) In any case where the employer is not a self-insurer, in order that the liability for compensation imposed by this chapter may be most effectively discharged by the employer and in order that the administration of this chapter in respect of such liability may be facilitated, the commission shall by regulation provide for the discharge, by the carrier or carriers for such employer, of such obligations and duties of the employer in respect of such liability imposed by this chapter upon the employer as it considers proper in order to effectuate the provisions of this chapter. For such purpose (a) notice to or knowledge of an employer of the occurrence of the injury shall be notice to or knowledge of the carrier or carriers; (b) jurisdiction of the employer by the commission or any court under this chapter shall be jurisdiction of the carrier or carriers; and (c) any requirement by the commission or any court under any compensation order, finding, or decision shall be binding upon the carrier or carriers in the same manner and to the same extent as upon the employer.

(3) As used in this section:

(a) "Affiliate transfer" is when an insurer transfers, at renewal or policy expiration, its personal or commercial lines insurance policies to an affiliated licensed insurer that is a member of the same insurance group or same holding company as the transferring insurer. The issuance of a replacement policy form providing the same or substantially similar coverage issued by the same insurer, or the transfer of personal or commercial insurance policies to a licensed affiliate insurer that will issue the same or substantially similar policy, are considered a renewal and will not be treated as a cancellation or nonrenewal. The affiliate transfer must be to a licensed affiliate insurer that has been determined by the commissioner to have the same or better financial strength as the transferring insurer. The policy transfer must be selected on a nondiscriminatory basis.

(b) "Substantially similar" means a policy that provides the same basic coverages but may add, alter or eliminate incidental coverages and may provide coverages using different textual language.

HISTORY: Codes, 1942, § 6998-39; Laws, 1948, ch. 354, § 33; Laws, 1972, ch. 396, § 1; reenacted, Laws, 1982, ch. 473, § 39; reenacted without change, Laws, 1990, ch. 405, § 41; Laws, 1992, ch. 577, § 5; Laws, 2007, ch. 366, § 1, eff from and after July 1, 2007; Laws, 2018, ch. 312, § 4, eff from and after July 1, 2018.

Amendment Notes — The 2018 amendment, in (1), added the last two sentences of the first paragraph, and added the last three paragraphs; and added (3).

JUDICIAL DECISIONS

1. In general.

Statute does not apply to situations in which a policy expires for failure to pay a premium in a timely manner. Amfed Nat'l Ins. Co. v. NTC Transp., Inc., 196 So. 3d 947, 2016 Miss. LEXIS 318 (Miss. 2016).

It was error to affirm an order granting an employer summary judgment because the employer failed to establish that it had coverage in effect at the time of an employee's injury; the statute was inapplicable because the insurer did not cancel the employer's policy or intend to renew the policy. Amfed Nat'l Ins. Co. v. NTC Transp., Inc., 196 So. 3d 947, 2016 Miss. LEXIS 318 (Miss. 2016).

§ 71-3-79. Acceptance of premium by carrier and estoppel.

JUDICIAL DECISIONS

1. In general.

Workers' Compensation Act applied to an employer because it had at least five employees at the time of a workers' injury; there was no evidence that any of the employer's officers had elected to opt out of coverage in writing, and thus, they acted as employees and counted as employees for coverage purposes. Southeastern Auto Brokers v. Graves, 210 So. 3d 1012, 2015 Miss. App. LEXIS 205 (Miss. Ct. App. 2015).

§ 71-3-81. Notice of coverage.

Editor's Notes — Laws of 2012, ch. 522, § 10, provides:

"SECTION 10. The Workers' Compensation Commission shall promulgate a written statement specifying the changes made to the Workers' Compensation Law by this act to every employer in this state subject to the Workers' Compensation Law. Within ten (10) days of receipt of this written statement from the Commission, every employer shall post the Commission's statement in a conspicuous place or places in and about his place or places of business and adjacent to the Notice of Coverage as required by Section 71-3-81."

§ 71-3-83. Civil and criminal penalties for failure to secure payment of compensation.

JUDICIAL DECISIONS

ANALYSIS

2. Res judicata.
3. Statute of limitations.

2. Res judicata.

Res judicata did not bar enforcing a workers' compensation judgment against a corporate employer's president, despite not being a named party in the suit awarding compensation, because (1) the president was statutorily liable for the employer's failure to secure compensation and compensate the employee, and (2) the judgment was tantamount to a judgment against the president as the president controlled the prior suit and was the employer's alter ego, nor did this violate due process, as the president's interests were aligned with the employer. Jarrett v. Dillard, 167 So. 3d 1147, 2015 Miss. LEXIS 348 (Miss. 2015).

After a worker got a workers' compensation award against an employer, res judicata barred the worker's estate's subsequent claim under Miss. Code Ann. § 71-3-83(1) to hold the employer's principal personally liable because, inter alia, the character of the person against whom the claim was made was the same, as the principal's personal liability was an issue in the first case. Jarrett v. Dillard, 167 So. 3d 1207, 2014 Miss. App. LEXIS 380 (Miss. Ct. App. 2014), rev'd, 167 So. 3d 1147, 2015 Miss. LEXIS 348 (Miss. 2015).

After a worker got a workers' compensation award against an employer, res judicata barred the worker's estate's subsequent claim under Miss. Code Ann. § 71-3-83(1) to hold the employer's principal personally liable because, inter alia, the parties were the same, as the principal was the employer's alter ego and the estate was the worker's successor. Jarrett v. Dillard, 167 So. 3d 1207, 2014 Miss. App. LEXIS 380 (Miss. Ct. App. 2014), rev'd, 167 So. 3d 1147, 2015 Miss. LEXIS 348 (Miss. 2015).

After a worker got a workers' compensation award against an employer, res judicata barred the worker's estate's subsequent claim under Miss. Code Ann. § 71-3-83(1) to hold the employer's prin-

cipal personally liable because, inter alia, the cause of action was the same, as judgment was sought against the principal in the first case. Jarrett v. Dillard, 167 So. 3d 1207, 2014 Miss. App. LEXIS 380 (Miss. Ct. App. 2014), rev'd, 167 So. 3d 1147, 2015 Miss. LEXIS 348 (Miss. 2015).

After a worker got a workers' compensation award against an employer, res judicata barred the worker's estate's subsequent claim under Miss. Code Ann. § 71-3-83(1) to hold the employer's principal personally liable because, inter alia, the two suits' subject matter was the same. Jarrett v. Dillard, 167 So. 3d 1207, 2014 Miss. App. LEXIS 380 (Miss. Ct. App. 2014), rev'd, 167 So. 3d 1147, 2015 Miss. LEXIS 348 (Miss. 2015).

3. Statute of limitations.

After a worker got a workers' compensation award against an employer, the three-year statute of limitations in Miss. Code Ann. § 15-1-49(1) barred the worker's estate's subsequent claim under Miss. Code Ann. § 71-3-83(1) to hold the employer's principal personally liable because the worker and the estate waited 12 years after learning the employer had no insurance to assert the claim. Jarrett v. Dillard, 167 So. 3d 1207, 2014 Miss. App. LEXIS 380 (Miss. Ct. App. 2014), rev'd, 167 So. 3d 1147, 2015 Miss. LEXIS 348 (Miss. 2015).

§ 71-3-93. Administrative staff.

JUDICIAL DECISIONS

1. In general.

There was substantial evidence to support the decision of the Mississippi Workers' Compensation Commission to affirm the administrative law judge's (AJ) decision to deny an employee disability benefits because the AJ, acting under the authority of the Commission, was entitled to rely on his personal experience in making reasonable inferences and in his determination to deny benefits. Sterling v. Eaton Corp., 109 So. 3d 1096, 2013 Miss. App. LEXIS 130 (Miss. Ct. App. 2013).

OPINIONS OF THE ATTORNEY GENERAL

The State Personnel Board statutes, Sections 25-9-101 et seq., supersede the conflicting provisions of Section 71-3-93, and the Workers' Compensation Commission may not establish and enforce its own rules and procedures that would conflict with State Personnel Board regulations for hiring, firing, appointment, promotion, demotion, and payment of personnel. Minor, April 7, 2000, A.G. Op. #2000-0177.

§ 71-3-95. Payment of operating expense.

(1) The commission shall make such expenditures as may be necessary for the adequate administration of this chapter, including salaries and traveling expense, the cost of personal services, office rent at the seat of government and elsewhere, the purchase of books, periodicals, office equipment and supplies, printing and binding reports, the cost of membership in official organizations, and other purposes. All expenditures of the commission in the administration of this chapter shall be allowed and paid out of the State General Fund as provided in Section 71-3-100, upon the presentation of itemized vouchers therefor approved by the chairman of the commission.

(2) The commission is authorized, in its discretion, to transfer a sum or sums not to exceed Two Hundred Thousand Dollars ($200,000.00) to the

Second Injury Fund. The commission is further authorized, in its discretion, to replace any funds so transferred in the event that funds become available.

HISTORY: Codes, 1942, § 6998-48; Laws, 1948, ch. 354, § 42; Laws, 1950, ch. 412, § 18; reenacted without change, Laws, 1982, ch. 473, § 48; Laws, 1984, ch. 497, § 2; Laws, 1987, ch. 361, § 7; reenacted without change, Laws, 1990, ch. 405, § 50; Laws 2017, 1st Ex Sess, ch. 7, § 28, eff from and after passage (approved June 23, 2017).

Editor's Notes — The name of the Second Injury Fund, referred to in subsection (2), was amended to be the Second Injury Trust Fund by Section 27 of Chapter 7, Laws of 2017, 1st Extraordinary Session, effective June 23, 2017. See Section 71-3-73.

Amendment Notes — The 2017 amendment, effective June 23, 2017, substituted "State General Fund as provided in Section 71-3-100" for "Administration Expense Fund as provided in Section 71-3-97" in (1); and deleted "from the Administration Expense Fund" following "($2000,000.00)" in (2).

§ 71-3-97. Collection of civil penalties authorized by chapter; deposit of civil penalties into State General Fund.

All civil penalties provided in this chapter, if not voluntarily paid, may be collected by civil suit brought by the commission, and shall be paid into the State General Fund.

HISTORY: Codes, 1942, § 6998-49; Laws, 1948, ch. 354, § 43; reenacted without change, Laws, 1982, ch. 473, § 49; reenacted without change, Laws, 1990, ch. 405, § 51; Laws 2017, 1st Ex Sess, ch. 7, § 29, eff from and after passage (approved June 23, 2017).

Amendment Notes — The 2017 amendment, effective June 23, 2017, deleted former (1) through (3), which read: "(1) There is hereby established in the state treasury a special fund for the purpose of providing for the payment of all expenses in respect to the administration of this chapter. Such fund shall be administered by the commission. The state treasurer shall be the custodian of such funds, and all monies and securities in such fund shall be held in trust by such treasurer and shall not be the money or property of the state. (2) The state treasurer is authorized to disburse monies from such fund only upon order of the commission. The official bond of the state treasurer shall be conditioned for the faithful performance of his duty hereunder. (3) The state treasurer shall deposit any monies paid into such fund into such qualified depository banks as the commission may designate, and is authorized to invest any portion of the fund which, in the opinion of the commission, is not needed for current requirements, in the same manner and subject to all the provisions of the law with respect to the deposit of state funds by such treasurer. All interest earned by such portion of the fund as may be invested by the state treasurer shall be collected by him and placed to the credit of such fund"; deleted the subsection (4) designator; and substituted "paid into the State General Fund" for "paid into such fund" at the end.

§ 71-3-99. Budget and collection procedure.

(1) The commission shall estimate annually in advance the amounts necessary for the administration of this chapter, in the following manner:

(a) The commission shall, as soon as practicable after the first day of January in each year, determine the expense of administration of this

chapter for the one-year period preceding the first day of January. The expense of administration for such period shall be used as the basis for determining the amount to be assessed against each carrier and self-insurer in order to provide for the expenses of the administration of this chapter for the one-year period.

(b) Each carrier and self-insurer shall be assessed Two Hundred Fifty Dollars ($250.00). The proceeds of such assessment shall be deducted from the estimate of total expenses and the remaining expenses of administration shall be prorated among the carriers writing compensation insurance in the state and self-insurers. The gross claims for compensation and medical services and supplies paid by the insurance carriers and self-insurers is the basis for computing the amount to be assessed, in the proportion that the total gross claims for compensation and medical services and supplies paid by such carrier or self-insurer during the preceding one-year period bore to the total gross claims for compensation and medical supplies and services paid by all carriers and self-insurers during such period. This amount may be assessed as a specific amount or as a percentage of gross claims for compensation and medical supplies and services paid by the insurance carriers and self-insurers as the commission may direct, and shall be such amount as shall be reasonably necessary to defray the necessary expense of such administration.

(2) The commission shall provide by regulation for the collection of the amounts assessed against each carrier and self-insurer. Such amounts shall be paid within thirty (30) days from the date that notice is served upon such carrier. If such amounts are not paid within such period, there may be assessed, for each thirty (30) days the amount so assessed remains unpaid, a civil penalty equal to ten percent (10%) of the amount so unpaid, which shall be collected at the same time and as a part of the amount assessed.

(3) If any carrier or self-insurer fails to pay the amounts assessed against it under the provisions of this section within sixty (60) days from the time such notice is served, the commission may suspend or revoke the authorization to insure compensation or to be self-insured.

(4) All amounts collected under the provisions of this section shall be paid into the State General Fund as provided in Section 71-3-100.

(5) The commission may require from each carrier and self-insurer, at such time and in accordance with regulations as the commission may prescribe, reports in respect to all payments of compensation and medical supplies and services by such carriers or self-insurers during each prior period, and may determine the amounts paid by each carrier and self-insurer and the amounts paid by all carriers and self-insurers during such period.

(6) Every carrier and self-insurer shall file with the commission on or before the first day of March of each year, a statement on the prescribed forms showing the gross claims for compensation and medical services and supplies paid by such carrier or self-insurer during the preceding one-year period ending on the thirty-first day of December. Any carrier or self-insurer which neglects to make and file its annual written statement within the time

provided in this chapter shall pay to the commission Twenty Dollars ($20.00) for each day's neglect.

HISTORY: Codes, 1942, § 6998-50; Laws, 1948, ch. 354, § 44; Laws, 1950, ch. 412, § 19; Laws, 1978, ch. 320, § 1; reenacted, Laws, 1982, ch. 473, § 50; Laws, 1987, ch. 361, § 8; reenacted without change, Laws, 1990, ch. 405, § 52; Laws, 2017, 1st Ex Sess, ch. 7, § 30, eff from and after passage (approved June 23, 2017).

Amendment Notes — The 2017 amendment, effective June 23, 2017, rewrote (4), which read: "All amounts collected under the provisions of this section shall be paid into the Administration Expense Fund."

Cross References — Deposit of civil penalties collected under this chapter to be paid into State General Fund, see § 71-3-97.

§ 71-3-100. Payment and deposit in State General Fund of funds received by Workers' Compensation Commission; funding of commission expenses.

All funds received by the Workers' Compensation Commission, as established by Section 71-3-85 et seq., shall be paid to the State Treasurer, who shall issue receipts therefor and who shall deposit such funds into the State General Fund in the State Treasury.

From and after July 1, 2016, the expenses of the Workers' Compensation Commission shall be defrayed by appropriation from the State General Fund and all user charges and fees authorized by Section 71-3-85 et seq. shall be deposited into the State General Fund as authorized by law.

From and after July 1, 2016, the Workers' Compensation Commission shall not charge another state agency a fee, assessment, rent or other charge for services or resources received by authority of Section 71-3-85 et seq.

HISTORY: Laws, 1973, ch. 381, § 4; reenacted, Laws, 1982, ch. 473, § 51; Laws, 1984, ch. 488, § 272; reenacted without change, Laws, 1990, ch. 405, § 53; Laws, 2016, ch. 459, § 67; Laws 2017, 1st Ex Sess, ch. 7, § 31, eff from and after passage (approved June 23, 2017).

Editor's Notes — Laws of 2016, ch. 459, § 1, codified as § 27-104-201, provides:

"SECTION 1. This act shall be known and may be cited as the 'Mississippi Budget Transparency and Simplification Act of 2016.' "

Amendment Notes — The 2016 amendment substituted "Workers' Compensation" for "Workmen's Compensation" in the first paragraph; and added the last two paragraphs.

The 2017 amendment, effective June 23, 2017, rewrote the first paragraph, which read: "All funds received by the Workers' Compensation Commission, as established by Section 71-3-85 et seq., shall be paid to the State Treasurer, who shall issue receipts therefor and who shall deposit such funds in the State Treasury in a special fund to the credit of said commission. All such funds shall be expended only pursuant to appropriation approved by the Legislature and as provided by law"; in the second paragraph, substituted "the Workers' Compensation Commission" for "this agency," and "authorized by Section 71-3-85 et seq." for "authorized under this section"; and rewrote the last paragraph, which read: "From and after July 1, 2016, no state agency shall charge another state agency a fee, assessment, rent or other charge for services or resources received by authority of this section."

Cross References — Prohibition against one state agency charging another state agency fees, etc., for services or resources received, see § 27-104-203.

Defrayal of expenses of certain state agencies by appropriation of Legislature from General Fund, see § 27-104-205.

§ 71-3-109. Extraterritorial application.

JUDICIAL DECISIONS

4. Injury of employee permanently assigned or transferred out of Mississippi.

Mississippi Workers' Compensation Commission lacked jurisdiction when a claimant, who was living in Mississippi, was injured in an automobile accident in Texas while working as a truck driver for a company located in Texas because the claimant was not temporarily working outside of Mississippi. The claimant's departure from Mississippi was caused by a permanent assignment in Texas, and the claimant's only contact with Mississippi consisted of communications with the company when the claimant was in Mississippi and seeking employment. Stewart v. Dynamic Envtl. Servs., LLC, 245 So. 3d 543, 2018 Miss. App. LEXIS 31 (Miss. Ct. App.), cert. denied, — So. 3d —, 2018 Miss. LEXIS 289 (Miss. 2018).

§ 71-3-121. Drug and alcohol testing; employer's right to demand or administer; presumptions; admissibility of results.

(1) In the event that an employee sustains an injury at work or asserts a work-related injury, the employer shall have the right to administer drug and alcohol testing or require that the employee submit himself to drug and alcohol testing. If the employee has a positive test indicating the presence, at the time of injury, of any drug illegally used or t he use of a valid prescription medication(s) taken contrary to the prescriber's instructions and/or contrary to label warnings, or eight one-hundredths percent (.08%) or more by weight volume of alcohol in the person's blood, it shall be presumed that the proximate cause of the injury was the use of a drug illegally, or the use of a valid prescription medication(s) taken contrary to the prescriber's instructions and/or contrary to label warnings, or the intoxication due to the use of alcohol by the employee. If the employee refuses to submit himself to drug and alcohol testing immediately after the alleged work-related injury, then it shall be presumed that the employee was using a drug illegally, or was using a valid prescription medication(s) contrary to the prescriber's instructions and/or contrary to label warnings, or was intoxicated due to the use of alcohol at the time of the accident and that the proximate cause of the injury was the use of a drug illegally, or the use of a valid prescription medication(s) taken contrary to the prescriber's instructions and/or contrary to label warnings, or the intoxication due to the use of alcohol of the employee. The burden of proof will then be placed upon the employee to prove that the use of drugs illegally, or the use of a valid prescription medication(s) taken contrary to the prescriber's instructions and/or contrary to label warnings, or intoxication due to the use of alcohol was not a contributing cause of the accident in order to defeat the defense of the employer provided under Section 71-3-7.

(2) The results of the drug and alcohol tests, employer-administered or otherwise, shall be considered admissible evidence solely on the issue of causation in the determination of the use of drugs illegally, or the use of a valid prescription medication(s) taken contrary to the prescriber's instructions and/or contrary to label warnings, or the intoxication due to the use of alcohol of an employee at the time of injury for workers' compensation purposes under Section 71-3-7.

(3) No cause of action for defamation of character, libel, slander or damage to reputation arises in favor of any person against an employer under the provisions of this section.

HISTORY: Laws, 1992, ch. 577, § 7; Laws, 2012, ch. 522, § 8, eff from and after July 1, 2012.

Editor's Notes — Laws of 2012, ch. 522, §§ 10 and 11, provide:

"SECTION 10. The Workers' Compensation Commission shall promulgate a written statement specifying the changes made to the Workers' Compensation Law by this act to every employer in this state subject to the Workers' Compensation Law. Within ten (10) days of receipt of this written statement from the Commission, every employer shall post the Commission's statement in a conspicuous place or places in and about his place or places of business and adjacent to the Notice of Coverage as required by Section 71-3-81.

"SECTION 11. This act shall take effect and be in force from and after July 1, 2012, and shall apply to injuries occurring on or after July 1, 2012."

Amendment Notes — The 2012 amendment rewrote the section.

RESEARCH REFERENCES

ALR.

Workers' Compensation: Validity, Construction, and Application of Statutes Providing that Worker Who Suffers Workplace Injury and Subsequently Tests Positive for Alcohol Impairment or Illegal Drug Use Is Not Eligible for Workers' Compensation Benefits. 22 A.L.R. 6th 329.

§ 71-3-129. Child and spousal support liens placed upon workers' compensation.

JUDICIAL DECISIONS

1. Child support lien enforceable

Workers' Compensation Commission erred in reversing an administrative judge's order, finding that a deceased employee's minor children were ineligible for benefits because, while the children had been adopted by their stepfather, the lien for child support was valid inasmuch as the mother provided the Commission with proper notice, the lien for child support accrued prior to the adoption, and the adoption did not impact the mother's ability to execute on the lien. Young ex rel. Heirs of Tewksbury v. Air Masters Mech., Inc., — So. 3d —, 2019 Miss. App. LEXIS 152 (Miss. Ct. App. Apr. 16, 2019), rev'd, 294 So. 3d 1172, 2020 Miss. LEXIS 96 (Miss. 2020).

MISSISSIPPI WORKERS' COMPENSATION SELF-INSURER GUARANTY ASSOCIATION LAW

§ 71-3-151. Title.

JUDICIAL DECISIONS

1. Applicability.

Facts were undeveloped, precluding the courts from determining whether plaintiff's claims, as alleged in its complaint, could be pursued only under the Mississippi Tort Claims Act, as ordered by the trial court, and plaintiff could not pursue a cause of action as contemplated by Miss. Code Ann. § 71-3-151 et seq, or otherwise. Absent factual development, no court at this stage of the proceedings could accurately discern whether the Mississippi Workers' Compensation Group Self-Insurer Guaranty Association was an instrumentality of the Mississippi Workers' Compensation Commission. Former Bd. of Trs. & Members of Miss. Comp Choice Self-Insurers Fund v. Miss. Workers' Comp. Group Self-Insurer Guar. Ass'n, 157 So. 3d 820, 2014 Miss. LEXIS 571 (Miss. 2014).

§ 71-3-153. Purpose and application.

JUDICIAL DECISIONS

1. Assessment.

Workers' Compensation Group Self-Insurer Guaranty Association (GGA) had the authority to assess the Mississippi Manufacturers Association Workers' Compensation Group because the assessment was levied within three years of its withdrawal from the GGA; therefore, the assessment was consistent with the GGA's plan of operation and was a valid exercise of the Workers' Compensation Commission's regulatory authority under the Workers' Compensation Self-insurer Guaranty Association Law. Miss. Mfrs. Ass'n Workers' Comp. Grp. v. Miss. Workers' Comp. Group Self-Insurer Guar. Ass'n, 281 So. 3d 108, 2019 Miss. App. LEXIS 45 (Miss. Ct. App. 2019).

§ 71-3-159. Workers' Compensation Individual Self-insurer Guaranty Association and Workers' Compensation Group Self-insurer Guaranty Association.

JUDICIAL DECISIONS

1. Assessment.

Workers' Compensation Group Self-Insurer Guaranty Association (GGA) had the authority to assess the Mississippi Manufacturers Association Workers' Compensation Group because the assessment was levied within three years of its withdrawal from the GGA; therefore, the assessment was consistent with the GGA's plan of operation and was a valid exercise of the Workers' Compensation Commission's regulatory authority under the Workers' Compensation Self-insurer Guaranty Association Law. Miss. Mfrs. Ass'n Workers' Comp. Grp. v. Miss. Workers' Comp. Group Self-Insurer Guar. Ass'n, 281 So. 3d 108, 2019 Miss. App. LEXIS 45 (Miss. Ct. App. 2019).

§ 71-3-163. Powers, duties and obligations of the associations.

JUDICIAL DECISIONS

1. Assessment.

Workers' Compensation Group Self-Insurer Guaranty Association (GGA) had the authority to assess the Mississippi Manufacturers Association Workers' Compensation Group because the assessment was levied within three years of its withdrawal from the GGA; therefore, the assessment was consistent with the GGA's plan of operation and was a valid exercise of the Workers' Compensation Commission's regulatory authority under the Workers' Compensation Self-insurer Guaranty Association Law. Miss. Mfrs. Ass'n Workers' Comp. Grp. v. Miss. Workers' Comp. Group Self-Insurer Guar. Ass'n, 281 So. 3d 108, 2019 Miss. App. LEXIS 45 (Miss. Ct. App. 2019).

Plain language of the statute prohibited the assessment imposed upon the Mississippi Manufacturers Association Workers' Compensation Group because there was nothing to show that the Workers' Compensation Group Self-Insurer Guaranty Association's (GGA) fund balance ever declined to $ 750,000; because the statute prohibited the assessment, the GGA's plan of operation could not provide authority for the assessment. Miss. Mfrs. Ass'n Workers' Comp. Grp. v. Miss. Workers' Comp. Group Self-Insurer Guar. Ass'n, 281 So. 3d 108, 2019 Miss. App. LEXIS 45 (Miss. Ct. App. 2019).

Once assessments "shall be suspended" by operation of the statute, the assessments may be reinstituted only in accordance with the statute; that is, under the statute, the Workers' Compensation Group Self-Insurer Guaranty Association lacks authority to reinstitute assessments unless the fund balance actually declines to $750,000. Miss. Mfrs. Ass'n Workers' Comp. Grp. v. Miss. Workers' Comp. Group Self-Insurer Guar. Ass'n, 281 So. 3d 108, 2019 Miss. App. LEXIS 45 (Miss. Ct. App. 2019).

Mississippi Workers' Compensation Commission has authority to regulate self-insurers and their guaranty associations and to administer the provisions of the statute; however, the Commission cannot exercise its authority in a manner contrary to the terms of an applicable statute; although the Commission approved the Workers' Compensation Group Self-Insurer Guaranty Association's plan of operation, that provision is invalid to the extent that it is contrary to the plain language of the statute. Miss. Mfrs. Ass'n Workers' Comp. Grp. v. Miss. Workers' Comp. Group Self-Insurer Guar. Ass'n, 281 So. 3d 108, 2019 Miss. App. LEXIS 45 (Miss. Ct. App. 2019).

§ 71-3-165. Plan of operation of associations.

JUDICIAL DECISIONS

1. Assessment.

Workers' Compensation Group Self-Insurer Guaranty Association (GGA) had the authority to assess the Mississippi Manufacturers Association Workers' Compensation Group because the assessment was levied within three years of its withdrawal from the GGA; therefore, the assessment was consistent with the GGA's plan of operation and was a valid exercise of the Workers' Compensation Commission's regulatory authority under the Workers' Compensation Self-insurer Guaranty Association Law. Miss. Mfrs. Ass'n Workers' Comp. Grp. v. Miss. Workers' Comp. Group Self-Insurer Guar. Ass'n, 281 So. 3d 108, 2019 Miss. App. LEXIS 45 (Miss. Ct. App. 2019).

§ 71-3-179. Immunity from liability.

JUDICIAL DECISIONS

1. In general.

Language of the immunity granted by the Mississippi Workers' Compensation Self-Insurer Guaranty Association Law is different and significantly more restrictive than the immunities granted by the Mississippi Tort Claims Act. Former Bd. of Trs. & Members of Miss. Comp Choice Self-Insurers Fund v. Miss. Workers' Comp. Group Self-Insurer Guar. Ass'n, 157 So. 3d 820, 2014 Miss. LEXIS 571 (Miss. 2014).

CHAPTER 5.

UNEMPLOYMENT COMPENSATION

Article 1.	General Provisions.	71-5-1
Article 3.	Mississippi Department of Employment Security.	71-5-101
Article 5.	Employment Service.	71-5-201
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ARTICLE 1.

GENERAL PROVISIONS.

Sec.

71-5-5.	Suspension under federal conditions [Repealed effective July 1, 2023].
71-5-7.	Suspension under state conditions.
71-5-11.	Definitions [Repealed effective July 1, 2023].
71-5-13.	Reciprocal arrangements.
71-5-19.	Penalties; when overpayment of benefits occurs; reciprocity with other states in collection of overpayment [Repealed effective July 1, 2023].

§ 71-5-5. Suspension under federal conditions [Repealed effective July 1, 2023].

The Legislature finds and declares that the existence and continued operation of a federal tax upon employers, against which some portion of the contributions required under this chapter may be credited, will protect Mississippi employers from undue disadvantages in their competition with employers in other states. If at any time, upon a formal complaint to the Governor, he shall find that Title IX of the Social Security Act has been amended or repealed by Congress or has been held unconstitutional by the Supreme Court of the United States, and that, as a result thereof, the provisions of this chapter requiring Mississippi employers to pay contributions will subject them to a serious competitive disadvantage in relation to employers in other states, he shall publish such findings and proclaim that the operation of the provisions of this chapter requiring the payment of contributions and benefits shall be suspended for a period of not more than six (6)

months. The Department of Employment Security shall thereupon requisition from the Unemployment Trust Fund all monies therein standing to its credit, and shall deposit such monies, together with any other monies in the Unemployment Compensation Fund, as a special fund in any banks or public depositories in this state in which general funds of the state may be deposited.

In all other cases, and unless the Governor shall issue such proclamation, this chapter shall remain in full force and effect.

If within the aforesaid six-month period the Governor shall find that other federal legislation has been enacted which avoids the competitive disadvantage herein described, he shall forthwith publicly so proclaim, and upon the date of such proclamation, the provisions of this chapter requiring the payment of contributions and benefits shall again become fully operative as of the date of such suspension with the same effect as if such suspension had not occurred. If within such six-month period no such other federal legislation is enacted or the Legislature of this state has not otherwise prescribed, the Department of Employment Security shall, under regulations prescribed by it, refund, without interest, to each employer by whom contributions have been paid his pro rata share of the total contributions paid under this chapter. Any interest or earnings of the fund shall be available to the Department of Employment Security to pay for the costs of making such refunds. When the Department of Employment Security shall have executed the duties herein prescribed and performed such other acts as are incidental to the termination of its duties under this chapter, the Governor shall, by public proclamation, declare that the provisions of this chapter, in their entirety, shall cease to be operative.

HISTORY: Codes, 1942, § 7370; Laws, 1936, 1st Ex. ch. 3; Laws, 2004, ch. 572, § 8; reenacted without change, Laws, 2008, 1st Ex Sess, ch. 30, § 8; reenacted and amended, Laws, 2010, ch. 559, § 8; reenacted without change, Laws, 2011, ch. 471, § 8; reenacted without change, Laws, 2012, ch. 515, § 8; Laws, 2013, ch. 309, § 1, eff from and after passage (approved March 6, 2013); reenacted without change, Laws, 2019, ch. 451, § 8, eff from and after April 3, 2019.

Editor's Notes — Laws of 2004, ch. 572, § 60, as amended by Laws of 2008, 1st Ex Sess, ch. 30, § 58, as amended by Laws of 2010, ch. 559, § 58, as amended by Laws of 2011, ch. 471, § 59, as amended by Laws of 2012, ch. 515, § 58, as amended by Laws of 2019, ch. 451, § 58, and as amended by Laws of 2020, ch. 476, § 7, provides:

"SECTION 60. Sections 8 through 59 of this act shall stand repealed on July 1, 2023."

Amendment Notes — The 2012 amendment reeanacted and amended the section by making minor punctuation changes in the last sentence.

The 2013 amendment deleted "direct the State Treasurer to" preceding "deposit such monies" in the last sentence of the first paragraph.

The 2019 amendment, effective April 3, 2019, reenacted the section without change.

§ 71-5-7. Suspension under state conditions.

If at any time the provisions of this chapter requiring the payment of contributions and benefits shall be held invalid under the Constitution of this state by the Supreme Court of this state or invalid under the United States Constitution by the Supreme Court of the United States, the department shall

forthwith requisition from the unemployment trust fund all monies therein standing to the credit of the department, and shall deposit such monies, together with any other monies in the unemployment compensation fund, in any banks or public depositories in this state in which general funds of the state may be deposited. If within six (6) months after the date of such decision the Legislature of this state enacts a new unemployment compensation law, such monies shall be paid into the unemployment compensation fund established thereunder. If within such six-month period the Legislature of this state has not enacted a new unemployment compensation law, the department shall, under regulations prescribed by it, refund, without interest, to each employer by whom contributions have been paid, his pro rata share of the total contributions paid under this chapter. Any interest or earnings of the fund shall be available to the department to pay for the costs of making such refunds. The provisions of this chapter, so far as necessary to the execution by the department of the duties prescribed in this section and to the performance of such other acts as are incidental to the termination of its duties under this chapter, shall remain in full force and effect until the completion thereof.

HISTORY: Codes, 1942, § 7371; Laws, 1936, 1st Ex. ch. 3; Laws, 2013, ch. 309, § 2, eff from and after passage (approved March 6, 2013).

Amendment Notes — The 2013 amendment deleted "direct the State Treasurer to" preceding "deposit such monies" near the end of the first sentence; and substituted "department" for "commission" throughout.

§ 71-5-11. Definitions [Repealed effective July 1, 2023].

As used in this chapter, unless the context clearly requires otherwise:

A. "Base period" means the first four (4) of the last five (5) completed calendar quarters immediately preceding the first day of an individual's benefit year.

B. "Benefit year" with respect to any individual means the period beginning with the first day of the first week with respect to which he first files a valid claim for benefits, and ending with the day preceding the same day of the same month in the next calendar year; and, thereafter, the period beginning with the first day of the first week with respect to which he next files his valid claim for benefits, and ending with the day preceding the same day of the same month in the next calendar year. Any claim for benefits made in accordance with Section 71-5-515 shall be deemed to be a "valid claim" for purposes of this subsection if the individual has been paid the wages for insured work required under Section 71-5-511(e).

C. "Contributions" means the money payments to the State Unemployment Compensation Fund required by this chapter.

D. "Calendar quarter" means the period of three (3) consecutive calendar months ending on March 31, June 30, September 30, or December 31.

E. "Department" or "commission" means the Mississippi Department of Employment Security, Office of the Governor.

F. "Executive director" means the Executive Director of the Mississippi

Department of Employment Security, Office of the Governor, appointed under Section 71-5-107.

G. "Employing unit" means this state or another state or any instrumentalities or any political subdivisions thereof or any of their instrumentalities or any instrumentality of more than one (1) of the foregoing or any instrumentality of any of the foregoing and one or more other states or political subdivisions, any Indian tribe as defined in Section 3306(u) of the Federal Unemployment Tax Act (FUTA), which includes any subdivision, subsidiary or business enterprise wholly owned by such Indian tribe, any individual or type of organization, including any partnership, association, trust, estate, joint-stock company, insurance company, or corporation, whether domestic or foreign, or the receiver, trustee in bankruptcy, trustee or successor thereof, or the legal representative of a deceased person, which has or had in its employ one or more individuals performing services for it within this state. All individuals performing services within this state for any employing unit which maintains two (2) or more separate establishments within this state shall be deemed to be employed by a single employing unit for all the purposes of this chapter. Each individual employed to perform or to assist in performing the work of any agent or employee of an employing unit shall be deemed to be employed by such employing unit for all purposes of this chapter, whether such individual was hired or paid directly by such employing unit or by such agent or employee, provided the employing unit had actual or constructive knowledge of the work. All individuals performing services in the employ of an elected fee-paid county official, other than those related by blood or marriage within the third degree computed by the rule of the civil law to such fee-paid county official, shall be deemed to be employed by such county as the employing unit for all the purposes of this chapter. For purposes of defining an "employing unit" which shall pay contributions on remuneration paid to individuals, if two (2) or more related corporations concurrently employ the same individual and compensate such individual through a common paymaster which is one (1) of such corporations, then each such corporation shall be considered to have paid as remuneration to such individual only the amounts actually disbursed by it to such individual and shall not be considered to have paid as remuneration to such individual such amounts actually disbursed to such individual by another of such corporations.

H. "Employer" means:

(1) Any employing unit which,

(a) In any calendar quarter in either the current or preceding calendar year paid for service in employment wages of One Thousand Five Hundred Dollars ($1,500.00) or more, except as provided in paragraph (9) of this subsection, or

(b) For some portion of a day in each of twenty (20) different calendar weeks, whether or not such weeks were consecutive, in either the current or the preceding calendar year had in employment at least one (1) individual (irrespective of whether the same individual was in

employment in each such day), except as provided in paragraph (9) of this subsection;

(2) Any employing unit for which service in employment, as defined in subsection I(3) of this section, is performed;

(3) Any employing unit for which service in employment, as defined in subsection I(4) of this section, is performed;

(4)(a) Any employing unit for which agricultural labor, as defined in subsection I(6) of this section, is performed;

(b) Any employing unit for which domestic service in employment, as defined in subsection I(7) of this section, is performed;

(5) Any individual or employing unit which acquired the organization, trade, business, or substantially all the assets thereof, of another which at the time of such acquisition was an employer subject to this chapter;

(6) Any individual or employing unit which acquired its organization, trade, business, or substantially all the assets thereof, from another employing unit, if the employment record of the acquiring individual or employing unit subsequent to such acquisition, together with the employment record of the acquired organization, trade, or business prior to such acquisition, both within the same calendar year, would be sufficient to constitute an employing unit as an employer subject to this chapter under paragraph (1) or (3) of this subsection;

(7) Any employing unit which, having become an employer under paragraph (1), (3), (5) or (6) of this subsection or under any other provisions of this chapter, has not, under Section 71-5-361, ceased to be an employer subject to this chapter;

(8) For the effective period of its election pursuant to Section 71-5-361(3), any other employing unit which has elected to become subject to this chapter;

(9)(a) In determining whether or not an employing unit for which service other than domestic service is also performed is an employer under paragraph (1) or (4)(a) of this subsection, the wages earned or the employment of an employee performing domestic service, shall not be taken into account;

(b) In determining whether or not an employing unit for which service other than agricultural labor is also performed is an employer under paragraph (1) or (4)(b) of this subsection, the wages earned or the employment of an employee performing services in agricultural labor, shall not be taken into account. If an employing unit is determined an employer of agricultural labor, such employing unit shall be determined an employer for purposes of paragraph (1) of this subsection;

(10) All entities utilizing the services of any employee leasing firm shall be considered the employer of the individuals leased from the employee leasing firm. Temporary help firms shall be considered the employer of the individuals they provide to perform services for other individuals or organizations.

I. "Employment" means and includes:

(1) Any service performed, which was employment as defined in this section and, subject to the other provisions of this subsection, including service in interstate commerce, performed for wages or under any contract of hire, written or oral, express or implied.

(2) Services performed for remuneration for a principal:

(a) As an agent-driver or commission-driver engaged in distributing meat products, vegetable products, fruit products, bakery products, beverages (other than milk), or laundry or dry-cleaning services;

(b) As a traveling or city salesman, other than as an agent-driver or commission-driver, engaged upon a full-time basis in the solicitation on behalf of, and the transmission to, a principal (except for sideline sales activities on behalf of some other person) of orders from wholesalers, retailers, contractors, or operator of hotels, restaurants, or other similar establishments for merchandise for resale or supplies for use in their business operations.

However, for purposes of this subsection, the term "employment" shall include services described in subsection I(2)(a) and (b) of this section, only if:

(i) The contract of service contemplates that substantially all of the services are to be performed personally by such individual;

(ii) The individual does not have a substantial investment in facilities used in connection with the performance of the services (other than in facilities for transportation); and

(iii) The services are not in the nature of a single transaction that is not part of a continuing relationship with the person for whom the services are performed.

(3) Service performed in the employ of this state or any of its instrumentalities or any political subdivision thereof or any of its instrumentalities or any instrumentality of more than one (1) of the foregoing or any instrumentality of any of the foregoing and one or more other states or political subdivisions or any Indian tribe as defined in Section 3306(u) of the Federal Unemployment Tax Act (FUTA), which includes any subdivision, subsidiary or business enterprise wholly owned by such Indian tribe; however, such service is excluded from "employment" as defined in the Federal Unemployment Tax Act by Section 3306(c)(7) of that act and is not excluded from "employment" under subsection I(5) of this section.

(4)(a) Services performed in the employ of a religious, charitable, educational, or other organization, but only if the service is excluded from "employment" as defined in the Federal Unemployment Tax Act, 26 USCS Section 3306(c)(8), and

(b) The organization had four (4) or more individuals in employment for some portion of a day in each of twenty (20) different weeks, whether or not such weeks were consecutive, within the current or preceding calendar year, regardless of whether they were employed at the same moment of time.

(5) For the purposes of subsection I(3) and (4) of this section, the term "employment" does not apply to service performed:

(a) In the employ of:

(i) A church or convention or association of churches; or

(ii) An organization which is operated primarily for religious purposes and which is operated, supervised, controlled, or principally supported by a church or convention or association of churches; or

(b) By a duly ordained, commissioned, or licensed minister of a church in the exercise of his ministry, or by a member of a religious order in the exercise of duties required by such order; or

(c) In the employ of a governmental entity referred to in subsection I(3), if such service is performed by an individual in the exercise of duties:

(i) As an elected official;

(ii) As a member of a legislative body, or a member of the judiciary, of a state or political subdivision or a member of an Indian tribal council;

(iii) As a member of the State National Guard or Air National Guard;

(iv) As an employee serving on a temporary basis in case of fire, storm, snow, earthquake, flood or similar emergency;

(v) In a position which, under or pursuant to the laws of this state or laws of an Indian tribe, is designated as:

1. A major nontenured policy-making or advisory position, or

2. A policy-making or advisory position the performance of the duties of which ordinarily does not require more than eight (8) hours per week; or

(d) In a facility conducted for the purpose of carrying out a program of rehabilitation for individuals whose earning capacity is impaired by age or physical or mental deficiency or injury, or providing remunerative work for individuals who because of their impaired physical or mental capacity cannot be readily absorbed in the competitive labor market, by an individual receiving such rehabilitation or remunerative work; or

(e) By an inmate of a custodial or penal institution; or

(f) As part of an unemployment work-relief or work-training program assisted or financed, in whole or in part, by any federal agency or agency of a state or political subdivision thereof or of an Indian tribe, by an individual receiving such work relief or work training, unless coverage of such service is required by federal law or regulation.

(6) Service performed by an individual in agricultural labor as defined in paragraph (15)(a) of this subsection when:

(a) Such service is performed for a person who:

(i) During any calendar quarter in either the current or the preceding calendar year paid remuneration in cash of Twenty Thousand Dollars ($20,000.00) or more to individuals employed in agricultural labor, or

(ii) For some portion of a day in each of twenty (20) different calendar weeks, whether or not such weeks were consecutive, in either the current or the preceding calendar year, employed in agricultural labor ten (10) or more individuals, regardless of whether they were employed at the same moment of time.

(b) For the purposes of subsection I(6) any individual who is a member of a crew furnished by a crew leader to perform service in agricultural labor for any other person shall be treated as an employee of such crew leader:

(i) If such crew leader holds a valid certificate of registration under the Farm Labor Contractor Registration Act of 1963; or substantially all the members of such crew operate or maintain tractors, mechanized harvesting or crop dusting equipment, or any other mechanized equipment, which is provided by such crew leader; and

(ii) If such individual is not an employee of such other person within the meaning of subsection I(1).

(c) For the purpose of subsection I(6), in the case of any individual who is furnished by a crew leader to perform service in agricultural labor for any other person and who is not treated as an employee of such crew leader under paragraph (6)(b) of this subsection:

(i) Such other person and not the crew leader shall be treated as the employer of such individual; and

(ii) Such other person shall be treated as having paid cash remuneration to such individual in an amount equal to the amount of cash remuneration paid to such individual by the crew leader (either on his own behalf or on behalf of such other person) for the service in agricultural labor performed for such other person.

(d) For the purposes of subsection I(6) the term "crew leader" means an individual who:

(i) Furnishes individuals to perform service in agricultural labor for any other person;

(ii) Pays (either on his own behalf or on behalf of such other person) the individuals so furnished by him for the service in agricultural labor performed by them; and

(iii) Has not entered into a written agreement with such other person under which such individual is designated as an employee of such other person.

(7) The term "employment" shall include domestic service in a private home, local college club or local chapter of a college fraternity or sorority performed for an employing unit which paid cash remuneration of One Thousand Dollars ($1,000.00) or more in any calendar quarter in the current or the preceding calendar year to individuals employed in such domestic service. For the purpose of this subsection, the term "employment" does not apply to service performed as a "sitter" at a hospital in the employ of an individual.

(8) An individual's entire service, performed within or both within and without this state, if:

(a) The service is localized in this state; or

(b) The service is not localized in any state but some of the service is performed in this state; and

(i) The base of operations or, if there is no base of operations, the place from which such service is directed or controlled is in this state; or

(ii) The base of operations or place from which such service is directed or controlled is not in any state in which some part of the service is performed, but the individual's residence is in this state.

(9) Services not covered under paragraph (8) of this subsection and performed entirely without this state, with respect to no part of which contributions are required and paid under an unemployment compensation law of any other state or of the federal government, shall be deemed to be employment subject to this chapter if the individual performing such services is a resident of this state and the department approves the election of the employing unit for whom such services are performed that the entire service of such individual shall be deemed to be employment subject to this chapter.

(10) Service shall be deemed to be localized within a state if:

(a) The service is performed entirely within such state; or

(b) The service is performed both within and without such state, but the service performed without such state is incidental to the individual's service within the state; for example, is temporary or transitory in nature or consists of isolated transactions.

(11) The services of an individual who is a citizen of the United States, performed outside the United States (except in Canada), in the employ of an American employer (other than service which is deemed "employment" under the provisions of paragraph (8), (9) or (10) of this subsection or the parallel provisions of another state's law), if:

(a) The employer's principal place of business in the United States is located in this state; or

(b) The employer has no place of business in the United States; but

(i) The employer is an individual who is a resident of this state; or

(ii) The employer is a corporation which is organized under the laws of this state; or

(iii) The employer is a partnership or a trust and the number of the partners or trustees who are residents of this state is greater than the number who are residents of any one (1) other state; or

(c) None of the criteria of subparagraphs (a) and (b) of this paragraph are met but the employer has elected coverage in this state or, the employer having failed to elect coverage in any state, the individual has filed a claim for benefits, based on such service, under the law of this state; or

(d) An "American employer," for purposes of this paragraph, means a person who is:

(i) An individual who is a resident of the United States; or

(ii) A partnership if two-thirds (2/3) or more of the partners are residents of the United States; or

(iii) A trust if all of the trustees are residents of the United States; or

(iv) A corporation organized under the laws of the United States or of any state.

(12) All services performed by an officer or member of the crew of an American vessel on or in connection with such vessel, if the operating office from which the operations of such vessel operating on navigable waters within, or within and without, the United States are ordinarily and regularly supervised, managed, directed and controlled, is within this state, notwithstanding the provisions of subsection I(8).

(13) Service with respect to which a tax is required to be paid under any federal law imposing a tax against which credit may be taken for contributions required to be paid into a state unemployment fund, or which as a condition for full tax credit against the tax imposed by the Federal Unemployment Tax Act, 26 USCS Section 3301 et seq., is required to be covered under this chapter, notwithstanding any other provisions of this subsection.

(14) Services performed by an individual for wages shall be deemed to be employment subject to this chapter unless and until it is shown to the satisfaction of the department that such individual has been and will continue to be free from control and direction over the performance of such services both under his contract of service and in fact; and the relationship of employer and employee shall be determined in accordance with the principles of the common law governing the relation of master and servant.

(15) The term "employment" shall not include:

(a) Agricultural labor, except as provided in subsection I(6) of this section. The term "agricultural labor" includes all services performed:

(i) On a farm or in a forest in the employ of any employing unit in connection with cultivating the soil, in connection with cutting, planting, deadening, marking or otherwise improving timber, or in connection with raising or harvesting any agricultural or horticultural commodity, including the raising, shearing, feeding, caring for, training, and management of livestock, bees, poultry, fur-bearing animals and wildlife;

(ii) In the employ of the owner or tenant or other operator of a farm, in connection with the operation, management, conservation, improvement or maintenance of such farm and its tools and equipment, or in salvaging timber or clearing land of brush and other debris left by a hurricane, if the major part of such service is performed on a farm;

(iii) In connection with the production or harvesting of naval stores products or any commodity defined in the Federal Agricultural Marketing Act, 12 USCS Section 1141j(g), or in connection with the raising or harvesting of mushrooms, or in connection with the ginning of cotton, or in connection with the operation or maintenance of ditches, canals, reservoirs, or waterways not owned or operated for profit, used exclusively for supplying and storing water for farming purposes;

(iv)(A) In the employ of the operator of a farm in handling, planting, drying, packing, packaging, processing, freezing, grading, storing or delivering to storage or to market or to a carrier for transportation to market, in its unmanufactured state, any agricultural or horticultural commodity; but only if such operator produced more than one-half (1/2) of the commodity with respect to which such service is performed;

(B) In the employ of a group of operators of farms (or a cooperative organization of which such operators are members) in the performance of service described in subitem (A), but only if such operators produced more than one-half (1/2) of the commodity with respect to which such service is performed;

(C) The provisions of subitems (A) and (B) shall not be deemed to be applicable with respect to service performed in connection with commercial canning or commercial freezing or in connection with any agricultural or horticultural commodity after its delivery to a terminal market for distribution for consumption;

(v) On a farm operated for profit if such service is not in the course of the employer's trade or business;

(vi) As used in paragraph (15)(a) of this subsection, the term "farm" includes stock, dairy, poultry, fruit, fur-bearing animals, and truck farms, plantations, ranches, nurseries, ranges, greenhouses, or other similar structures used primarily for the raising of agricultural or horticultural commodities, and orchards.

(b) Domestic service in a private home, local college club, or local chapter of a college fraternity or sorority, except as provided in subsection I(7) of this section, or service performed as a "sitter" at a hospital in the employ of an individual.

(c) Casual labor not in the usual course of the employing unit's trade or business.

(d) Service performed by an individual in the employ of his son, daughter, or spouse, and service performed by a child under the age of twenty-one (21) in the employ of his father or mother.

(e) Service performed in the employ of the United States government or of an instrumentality wholly owned by the United States; except that if the Congress of the United States shall permit states to require any instrumentalities of the United States to make payments into an unemployment fund under a state unemployment compensation

act, then to the extent permitted by Congress and from and after the date as of which such permission becomes effective, all of the provisions of this chapter shall be applicable to such instrumentalities and to services performed by employees for such instrumentalities in the same manner, to the same extent, and on the same terms as to all other employers and employing units. If this state should not be certified under the Federal Unemployment Tax Act, 26 USCS Section 3304(c), for any year, then the payment required by such instrumentality with respect to such year shall be deemed to have been erroneously collected and shall be refunded by the department from the fund in accordance with the provisions of Section 71-5-383.

(f) Service performed in the employ of an "employer" as defined by the Railroad Unemployment Insurance Act, 45 USCS Section 351(a), or as an "employee representative" as defined by the Railroad Unemployment Insurance Act, 45 USCS Section 351(f), and service with respect to which unemployment compensation is payable under an unemployment compensation system for maritime employees, or under any other unemployment compensation system established by an act of Congress; however, the department is authorized and directed to enter into agreements with the proper agencies under such act or acts of Congress, which agreements shall become effective ten (10) days after publication thereof in the manner provided in Section 71-5-117 for general rules, to provide reciprocal treatment to individuals who have, after acquiring potential rights to benefits under this chapter, acquired rights to unemployment compensation under such act or acts of Congress or who have, after acquiring potential rights to unemployment compensation under such act or acts of Congress, acquired rights to benefits under this chapter.

(g) Service performed in any calendar quarter in the employ of any organization exempt from income tax under the Internal Revenue Code, 26 USCS Section 501(a) (other than an organization described in 26 USCS Section 401(a)), or exempt from income tax under 26 USCS Section 521 if the remuneration for such service is less than Fifty Dollars ($50.00).

(h) Service performed in the employ of a school, college, or university if such service is performed:

(i) By a student who is enrolled and is regularly attending classes at such school, college or university, or

(ii) By the spouse of such a student if such spouse is advised, at the time such spouse commences to perform such service, that

(A) The employment of such spouse to perform such service is provided under a program to provide financial assistance to such student by such school, college, or university, and

(B) Such employment will not be covered by any program of unemployment insurance.

(i) Service performed by an individual under the age of twenty-two (22) who is enrolled at a nonprofit or public educational institution

which normally maintains a regular faculty and curriculum and normally has a regularly organized body of students in attendance at the place where its educational activities are carried on, as a student in a full-time program taken for credit at such institution, which combines academic instruction with work experience, if such service is an integral part of such program and such institution has so certified to the employer, except that this subparagraph shall not apply to service performed in a program established for or on behalf of an employer or group of employers.

(j) Service performed in the employ of a hospital, if such service is performed by a patient of the hospital, as defined in subsection M of this section.

(k) Service performed as a student nurse in the employ of a hospital or a nurses' training school by an individual who is enrolled and is regularly attending classes in a nurses' training school chartered or approved pursuant to state law; and services performed as an intern in the employ of a hospital by an individual who has completed a four-year course in a medical school chartered or approved pursuant to state law.

(*l*) Service performed by an individual as an insurance agent or as an insurance solicitor, if all such service performed by such individual is performed for remuneration solely by way of commission.

(m) Service performed by an individual in the delivery or distribution of newspapers or shopping news, not including delivery or distribution to any point for subsequent delivery or distribution, except those employed by political subdivisions, state and local governments, nonprofit organizations and Indian tribes, as defined by this chapter, or any other entities for which coverage is required by federal statute and regulation.

(n) If the services performed during one-half (1/2) or more of any pay period by an employee for the employing unit employing him constitute employment, all the services of such employee for such period shall be deemed to be employment; but if the services performed during more than one-half (1/2) of any such pay period by an employee for the employing unit employing him do not constitute employment, then none of the services of such employee for such period shall be deemed to be employment. As used in this subsection, the term "pay period" means a period (of not more than thirty-one (31) consecutive days) for which a payment of remuneration is ordinarily made to the employee by the employing unit employing him.

(o) Service performed by a barber or beautician whose work station is leased to him or her by the owner of the shop in which he or she works and who is compensated directly by the patrons he or she serves and who is free from direction and control by the lessor.

(p) Service performed by a "direct seller" if:

(i) Such person is engaged in the trade or business of selling (or soliciting the sale of) consumer products to any buyer on a buy-sell

basis, a deposit-commission basis, or any similar basis which the department prescribes by regulations, for resale (by the buyer or any other person) in the home or otherwise than in a permanent retail establishment; or such person is engaged in the trade or business of selling (or soliciting the sale of) consumer products in the home or otherwise than in a permanent retail establishment;

(ii) Substantially all the remuneration (whether or not paid in cash) for the performance of the services described in item (i) of this subparagraph is directly related to sales or other output (including the performance of services) rather than to the number of hours worked; and

(iii) The services performed by the person are performed pursuant to a written contract between such person and the person for whom the services are performed and such contract provides that the person will not be treated as an employee with respect to such services for federal tax purposes.

J. "Employment office" means a free public employment office or branch thereof, operated by this state or maintained as a part of the state controlled system of public employment offices.

K. "Public employment service" means the operation of a program that offers free placement and referral services to applicants and employers, including job development.

L. "Fund" means the Unemployment Compensation Fund established by this chapter, to which all contributions required and from which all benefits provided under this chapter shall be paid.

M. "Hospital" means an institution which has been licensed, certified, or approved by the State Department of Health as a hospital.

N. "Institution of higher learning," for the purposes of this section, means an educational institution which:

(1) Admits as regular students only individuals having a certificate of graduation from a high school, or the recognized equivalent of such a certificate;

(2) Is legally authorized in this state to provide a program of education beyond high school;

(3) Provides an educational program for which it awards a bachelor's or higher degree, or provides a program which is acceptable for full credit toward such a degree, a program of postgraduate or postdoctoral studies, or a program of training to prepare students for gainful employment in a recognized occupation;

(4) Is a public or other nonprofit institution;

(5) Notwithstanding any of the foregoing provisions of this subsection, all colleges and universities in this state are institutions of higher learning for purposes of this section.

O. "Re-employment assistance" means money payments payable to an individual as provided in this chapter and in accordance with Section 3304(a)(4) and 3306(h) of the Federal Unemployment Tax Act and Section

303(a)(5) of the Social Security Act, with respect to his unemployment through no fault of his own. Wherever the terms "benefits" or "unemployment benefits" appear in this chapter, they shall mean re-employment assistance.

P.(1) "State" includes, in addition to the states of the United States of America, the District of Columbia, Commonwealth of Puerto Rico and the Virgin Islands.

(2) The term "United States" when used in a geographical sense includes the states, the District of Columbia, Commonwealth of Puerto Rico and the Virgin Islands.

(3) The provisions of paragraphs (1) and (2) of subsection P, as including the Virgin Islands, shall become effective on the day after the day on which the United States Secretary of Labor approves for the first time under Section 3304(a) of the Internal Revenue Code of 1954 an unemployment compensation law submitted to the secretary by the Virgin Islands for such approval.

Q. "Unemployment."

(1) An individual shall be deemed "unemployed" in any week during which he performs no services and with respect to which no wages are payable to him, or in any week of less than full-time work if the wages payable to him with respect to such week are less than his weekly benefit amount as computed and adjusted in Section 71-5-505. The department shall prescribe regulations applicable to unemployed individuals, making such distinctions in the procedure as to total unemployment, part-total unemployment, partial unemployment of individuals attached to their regular jobs, and other forms of short-time work, as the department deems necessary.

(2) An individual's week of total unemployment shall be deemed to commence only after his registration at an employment office, except as the department may by regulation otherwise prescribe.

R.(1) "Wages" means all remuneration for personal services, including commissions and bonuses and the cash value of all remuneration in any medium other than cash, except that "wages," for purposes of determining employer's coverage and payment of contributions for agricultural and domestic service means cash remuneration only. The reasonable cash value of remuneration in any medium other than cash shall be estimated and determined in accordance with rules prescribed by the department; however, that the term "wages" shall not include:

(a) The amount of any payment made to, or on behalf of, an employee under a plan or system established by an employer which makes provision for his employees generally or for a class or classes of his employees (including any amount paid by an employer for insurance or annuities, or into a fund, to provide for any such payment), on account of:

(i) Retirement, or

(ii) Sickness or accident disability, or

(iii) Medical or hospitalization expenses in connection with sickness or actual disability, or

(iv) Death, provided the employee:

(A) Has not the option to receive, instead of provision for such death benefit, any part of such payment or, if such death benefit is insured, any part of the premiums (or contributions to premiums) paid by his employer, and

(B) Has not the right, under the provisions of the plan or system or policy of insurance providing for such death benefit, to assign such benefit or to receive a cash consideration in lieu of such benefit, either upon his withdrawal from the plan or system providing for such benefit or upon termination of such plan or system or policy of insurance or of his employment with such employer;

(b) Dismissal payments which the employer is not legally required to make;

(c) Payment by an employer (without deduction from the remuneration of an employee) of the tax imposed by the Internal Revenue Code, 26 USCS Section 3101;

(d) From and after January 1, 1992, the amount of any payment made to or on behalf of an employee for a "cafeteria" plan, which meets the following requirements:

(i) Qualifies under Section 125 of the Internal Revenue Code;

(ii) Covers only employees;

(iii) Covers only noncash benefits;

(iv) Does not include deferred compensation plans.

(2) [Not enacted].

S. "Week" means calendar week or such period of seven (7) consecutive days as the department may by regulation prescribe. The department may by regulation prescribe that a week shall be deemed to be in, within, or during any benefit year which includes any part of such week.

T. "Insured work" means "employment" for "employers."

U. The term "includes" and "including," when used in a definition contained in this chapter, shall not be deemed to exclude other things otherwise within the meaning of the term defined.

V. "Employee leasing arrangement" means any agreement between an employee leasing firm and a client, whereby specified client responsibilities such as payment of wages, reporting of wages for unemployment insurance purposes, payment of unemployment insurance contributions and other such administrative duties are to be performed by an employee leasing firm, on an ongoing basis.

W. "Employee leasing firm" means any entity which provides specified duties for a client company such as payment of wages, reporting of wages for unemployment insurance purposes, payment of unemployment insurance contributions and other administrative duties, in connection with the client's employees, that are directed and controlled by the client and that are providing ongoing services for the client.

X.(1) "Temporary help firm" means an entity which hires its own employees and provides those employees to other individuals or organizations to perform some service, to support or supplement the existing workforce in special situations such as employee absences, temporary skill shortages, seasonal workloads and special assignments and projects, with the expectation that the worker's position will be terminated upon the completion of the specified task or function.

(2) "Temporary employee" means an employee assigned to work for the clients of a temporary help firm.

Y. For the purposes of this chapter, the term "notice" shall include any official communication, statement or other correspondence required under the administration of this chapter, and sent by the department through the United States Postal Service or electronic or digital transfer, via modem or the Internet.

HISTORY: Codes, 1942, § 7440; Laws, 1940, ch. 295, § 13; Laws, 1948, ch. 412, § 10; Laws, 1955, Ex. Sess. ch. 93, § 2; Laws, 1971, ch. 519, § 13; Laws, 1977, ch. 497, § 1; Laws, 1978, ch. 533, § 1; Laws, 1979, ch. 311; Laws, 1981, ch. 343, § 1; Laws, 1983, ch. 371, § 1; Laws, 1985, ch. 406; Laws, 1992, ch. 339, § 1; Laws, 1993, ch. 328, § 1; Laws, 1998, ch. 331, § 1; Laws, 1998, ch. 491, § 1; Laws, 2002, ch. 562, § 1; Laws, 2004, ch. 572, § 9; Laws, 2007, ch. 606, § 3; reenacted without change, Laws, 2008, 1st Ex Sess, ch. 30, § 9; reenacted and amended, Laws, 2011, ch. 471, § 9; Laws, 2012, ch. 414, § 1; reenacted without change, Laws, 2012, ch. 515, § 9; Laws, 2013, ch. 309, § 3, eff from and after passage (approved March 6, 2013); reenacted without change, Laws, 2019, ch. 451, § 9, eff from and after April 3, 2019.

Joint Legislative Committee Note — Section 1 of ch. 414, Laws, 2012, effective July 1, 2012, amended this section. Section 9 of ch. 515, Laws, 2012, effective from and after July 1, 2012, reenacted the section without change. As set out above, this section reflects the language of both acts pursuant to Section 1-1-109 which gives the Joint Legislative Committee on Compilation, Revision, and Publication authority to integrate amendments so that all versions of the same code section enacted within the same legislative session may become effective. The Joint Committee on Compilation, Revision, and Publication ratified the integration of these amendments as consistent with the legislative intent at the August 16, 2012, meeting of the Committee.

Editor's Notes — Laws of 2004, ch. 572, § 60, as amended by Laws of 2008, 1st Ex Sess, ch. 30, § 58, as amended by Laws of 2010, ch. 559, § 58, as amended by Laws of 2011, ch. 471, § 59, as amended by Laws of 2012, ch. 515, § 58, as amended by Laws of 2019, ch. 451, § 58, and as amended by Laws of 2020, ch. 476, § 7, provides:

"SECTION 60. Sections 8 through 59 of this act shall stand repealed on July 1, 2023."

Amendment Notes — The first 2012 amendment (ch. 414), in J.(15)(m), deleted "under the age of eighteen (18)" after "by an individual" and added the exception at the end; and added J.(15)(p).

The second 2012 amendment (ch. 515) reenacted the section without change.

The 2013 amendment deleted former "B," which read: "Benefits" means the money payments payable to an individual, as provided in this chapter, with respect to his unemployment" and redesignated remaining subsections and subsection references accordingly; and added O.

The 2019 amendment, effective April 3, 2019, reenacted the section without change.

Federal Aspects— Section 303(a)(5) of the Social Security Act, see 42 USCS § 503(a)(5).

JUDICIAL DECISIONS

ANALYSIS

2. Determination of employment status.
3. —Exercise of control.
5. Self-employed persons.

2. Determination of employment status.

Administrative law judge's (ALJ) decision that independent operator distributors were agent and commissioned drivers for a corporation was erroneous because the ALJ failed to apply the law correctly; a discussion of the applicability of the factors contained in subsection (J)(2)(a) was absent from the ALJ's opinion, Earthgrains Bakery Group, Inc. v. Miss. Dep't of Empl. Sec., 131 So. 3d 1163, 2014 Miss. LEXIS 99 (Miss. 2014).

Claimant for unemployment benefits was not an employee of a paramedical company, pursuant to Miss. Code Ann. § 71-5-11, because (1) the written agreement between the parties did not constitute an enforceable contract, much less an enforceable employment contract; and (2) the claimant, who was a phlebotomist or paramedical examiner that performed medical-testing services on applicants for insurance policies pursuant to optional work orders, was an independent contractor, under Miss. Code Ann. § 71-3-3(r). MEDS, Inc. v. Miss. Dep't of Empl. Sec., 130 So. 3d 148, 2014 Miss. App. LEXIS 13 (Miss. Ct. App. 2014).

Record failed to support the conclusion of the Mississippi Department of Employment Security that a worker constituted an employee under Miss. Code Ann. § 71-5-11(J)(14) because the worker constituted an independent contractor; the worker set his own hours and received a commission, not an hourly wage, and the employer failed to exercise control, nor did it possess a right of control, over the details of the actual sales work at issue. College Network v. Miss. Dep't of Empl. Sec., 114 So. 3d 740, 2013 Miss. App. LEXIS 179 (Miss. Ct. App. 2013).

3. —Exercise of control.

Record showed that an employer/employee relationship existed between the employer and the claimant under Miss. Code Ann. § 71-5-11(J)(14). The record contained ample evidence that the claimant performed a service for the employer for wages and that the employer retained control over the claimant, in that the claimant was paid hourly, the employer set his work hours and provided some of his tools, he was not required to provide his own insurance, and the employer hired the claimant to perform general construction work, which required no specialized training. Sun Vista, Inc. v. Miss. Dep't of Empl. Sec., 52 So. 3d 1262, 2011 Miss. App. LEXIS 43 (Miss. Ct. App. 2011).

5. Self-employed persons.

Administrative law judge's decision that independent operator distributors were agent and commissioned drivers for a corporation was erroneous because the distributors did not satisfy the requirements for classification as employees, and they were employees of their own corporate entities. The distributors did not receive remuneration for services from the corporation since they were not being paid a salary, wages, or commission by the corporation, and they did not have personal service contracts. Earthgrains Bakery Group, Inc. v. Miss. Dep't of Empl. Sec., 131 So. 3d 1163, 2014 Miss. LEXIS 99 (Miss. 2014).

§ 71-5-13. Reciprocal arrangements.

(1) The department is hereby authorized to enter into arrangements with the appropriate agencies of other states or the federal government, whereby individuals performing services in this and other states for a single employing unit under circumstances not specifically provided for in Section 71-5-11, subsection I, or under similar provisions in the unemployment compensation laws of such other states, shall be deemed to be engaged in employment

performed entirely within this state or within one (1) of such other states and whereby potential rights to benefits accumulated under the unemployment compensation laws of one or more states or under such a law of the federal government, or both, may constitute the basis for the payment of benefits through a single appropriate agency under terms which the department finds will be fair and reasonable as to all affected interests and will not result in any substantial loss to the fund.

(2) The department is also authorized to enter into arrangements with the appropriate agencies of other states or of the federal government:

(a) Whereby wages or services upon the basis of which an individual may become entitled to benefits under the unemployment compensation law of another state or of the federal government shall be deemed to be wages for employment by employers for the purposes of Sections 71-5-501 through 71-5-507 and Section 71-5-511(e), provided such other state agency or agency of the federal government has agreed to reimburse the fund for such portion of benefits paid under this chapter upon the basis of such wages or services as the department finds will be fair and reasonable as to all affected interests; and

(b) Whereby the department will reimburse other state or federal agencies charged with the administration of unemployment compensation laws with such reasonable portion of benefits paid under the law of any such other states or of the federal government, upon the basis of employment or wages for employment by employers, as the department finds will be fair and reasonable as to all affected interests. Reimbursements so payable shall be deemed to be benefits for the purposes of Sections 71-5-451 through 71-5-459. The department is hereby authorized to make to other state or federal agencies, and receive from such other state or federal agencies, reimbursements from or to the fund, in accordance with arrangements pursuant to this section.

(3) The department is also authorized, in its discretion, to enter into or cooperate in arrangements with any federal agency whereby the facilities and services of the personnel of the department may be utilized for the taking of claims and the payment of unemployment compensation or allowances under any federal law enacted for the benefit of discharged members of the Armed Forces.

(4) The department shall participate in any arrangements for the payment of compensation on the basis of combining an individual's wages and employment covered under this chapter with his wages and employment covered under the unemployment compensation laws of other states which are approved by the United States Secretary of Labor in consultation with the state unemployment compensation agencies as reasonably calculated to assure the prompt and full payment of compensation in such situations and which include provisions for:

(a) Applying the base period of a single state law to a claim involving the combining of an individual's wages and employment covered under two (2) or more state unemployment compensation laws; and

(b) Avoiding the duplicate use of wages and employment by reason of such combining.

HISTORY: Codes, 1942, § 7441; Laws, 1940, ch. 295; Laws, 1944, ch. 288, § 4; Laws, 1971, ch. 519, § 14; Laws, 2013, ch. 309, § 14, eff from and after passage (approved March 6, 2013).

Amendment Notes — The 2013 amendment substituted "subsection I" for "subsection J" in the first sentence of (1); substituted "department" for "commission" throughout the section; and made minor stylistic changes.

§ 71-5-19. Penalties; when overpayment of benefits occurs; reciprocity with other states in collection of overpayment [Repealed effective July 1, 2023].

(1) Whoever makes a false statement or representation knowing it to be false, or knowingly fails to disclose a material fact, to obtain or increase any benefit or other payment under this chapter or under an employment security law of any other state, of the federal government or of a foreign government, either for himself or for any other person, shall be punished by a fine of not less than One Hundred Dollars ($100.00) nor more than Five Hundred Dollars ($500.00), or by imprisonment for not longer than thirty (30) days, or by both such fine and imprisonment; and each such false statement or representation or failure to disclose a material fact shall constitute a separate offense.

(2) Any employing unit, any officer or agent of an employing unit or any other person who makes a false statement or representation knowing it to be false, or who knowingly fails to disclose a material fact, to prevent or reduce the payment of benefits to any individual entitled thereto, or to avoid becoming or remaining subject hereto, or to avoid or reduce any contribution or other payment required from any employing unit under this chapter, or who willfully fails or refuses to make any such contribution or other payment, or to furnish any reports required hereunder or to produce or permit the inspection or copying of records as required hereunder, shall be punished by a fine of not less than One Hundred Dollars ($100.00) nor more than One Thousand Dollars ($1,000.00), or by imprisonment for not longer than sixty (60) days, or by both such fine and imprisonment; and each such false statement, or representation, or failure to disclose a material fact, and each day of such failure or refusal shall constitute a separate offense. In lieu of such fine and imprisonment, the employing unit or representative, or both employing unit and representative, if such representative is an employing unit in this state and is found to be a party to such violation, shall not be eligible for a contributions rate of less than five and four-tenths percent (5.4%) for the tax year in which such violation is discovered by the department and for the next two (2) succeeding tax years.

(3) Any person who shall willfully violate any provision of this chapter or any other rule or regulation thereunder, the violation of which is made unlawful or the observance of which is required under the terms of this chapter and for which a penalty is neither prescribed herein nor provided by any other applicable statute, shall be punished by a fine of not less than One Hundred

Dollars ($100.00) nor more than One Thousand Dollars ($1,000.00), or by imprisonment for not longer than sixty (60) days, or by both such fine and imprisonment; and each day such violation continues shall be deemed to be a separate offense. In lieu of such fine and imprisonment, the employing unit or representative, or both employing unit and representative, if such representative is an employing unit in this state and is found to be a party to such violation, shall not be eligible for a contributions rate of less than five and four-tenths percent (5.4%) for the tax year in which the violation is discovered by the department and for the next two (2) succeeding tax years.

(4)(a) An overpayment of benefits occurs when a person receives benefits under this chapter:

(i) While any conditions for the receipt of benefits imposed by this chapter were not fulfilled in his case;

(ii) While he was disqualified from receiving benefits; or

(iii) When such person receives benefits and is later found to be disqualified or ineligible for any reason, including, but not limited to, a redetermination or reversal by the department or the courts of a previous decision to award such person benefits.

(b) Any person receiving an overpayment shall, in the discretion of the department, be liable to have such sum deducted from any future benefits payable to him under this chapter and shall be liable to repay to the department for the Unemployment Compensation Fund a sum equal to the overpayment amount so received by him; and such sum shall be collectible in the manner provided in Sections 71-5-363 through 71-5-383 for the collection of past-due contributions. In addition to Sections 71-5-363 through 71-5-383, the following shall apply to cases involving damages for overpaid unemployment benefits which have been obtained and/or received through fraud as defined by department regulations and laws governing the department. By definition, fraud can include failure to report earnings while filing for unemployment benefits. In the event of fraud, a penalty of twenty percent (20%) of the amount of the overpayment shall be assessed. Three-fourths (3/4) of that twenty percent (20%) penalty shall be deposited into the unemployment trust fund and shall be used only for the purpose of payment of unemployment benefits. The remainder of that twenty percent (20%) penalty shall be deposited into the Special Employment Security Administrative Fund. Interest on the overpayment balance shall accrue at a rate of one percent (1%) per month on the unpaid balance until repaid and shall be deposited into the Special Employment Security Administration Fund. All interest, penalties and damages deposited into the Special Employment Security Administration Fund shall be used by the department for administration of the Mississippi Department of Employment Security.

(c) Any such judgment against such person for collection of such overpayment shall be in the form of a seven-year renewable lien. Unless action be brought thereon prior to expiration of the lien, the department must refile the notice of the lien prior to its expiration at the end of seven (7) years. There shall be no limit upon the number of times the department may refile notices of liens for collection of overpayments.

(d) All warrants issued by the department for the collection of any unemployment tax or for an overpayment of benefits imposed by statute and collected by the department shall be used to levy on salaries, compensation or other monies due the delinquent employer or claimant. No such warrant shall be issued until after the delinquent employer or claimant has exhausted all appeal rights associated with the debt. The warrants shall be served by mail or by delivery by an agent of the department on the person or entity responsible or liable for the payment of the monies due the delinquent employer or claimant. Once served, the employer or other person owing compensation due the delinquent employer or claimant shall pay the monies over to the department in complete or partial satisfaction of the liability. An answer shall be made within thirty (30) days after service of the warrant in the form and manner determined satisfactory by the department. Failure to pay the money over to the department as required by this section shall result in the served party being personally liable for the full amount of the monies owed and the levy and collection process may be issued against the party in the same manner as other debts owed to the department. Except as otherwise provided by this section, the answer, the amount payable under the warrant and the obligation of the payor to continue payment shall be governed by the garnishment laws of this state but shall be payable to the department.

(5) The department, by agreement with another state or the United States, as provided under Section 303(g) of the Social Security Act, may recover any overpayment of benefits paid to any individual under the laws of this state or of another state or under an unemployment benefit program of the United States. Any overpayments subject to this subsection may be deducted from any future benefits payable to the individual under the laws of this state or of another state or under an unemployment program of the United States.

HISTORY: Codes, 1942, § 7437; Laws, 1936, ch. 176; Laws, 1938, ch. 147; Laws, 1952, ch. 383, § 3; Laws, 1977, ch. 351; Laws, 1985, ch. 414; Laws, 1986, ch. 331; Laws, 1992, ch. 339, § 2; Laws, 1994, ch. 303, § 1; Laws, 2000, ch. 412, § 1; Laws, 2004, ch. 572, § 10; Laws, 2007, ch. 606, § 4; reenacted without change, Laws, 2008, 1st Ex Sess, ch. 30, § 10; reenacted without change, Laws, 2010, ch. 559, § 9; reenacted without change, Laws, 2011, ch. 471, § 10; reenacted and amended, Laws, 2012, ch. 515, § 10; Laws, 2013, ch. 309, § 4, eff from and after passage (approved March 6, 2013); reenacted without change, Laws, 2019, ch. 451, § 10, eff from and after April 3, 2019.

Editor's Notes — Laws of 2004, ch. 572, § 60, as amended by Laws of 2008, 1st Ex Sess, ch. 30, § 58, as amended by Laws of 2010, ch. 559, § 58, as amended by Laws of 2011, ch. 471, § 59, as amended by Laws of 2012, ch. 515, § 58, as amended by Laws of 2019, ch. 451, § 58, and as amended by Laws of 2020, ch. 476, § 7, provides:

"SECTION 60. Sections 8 through 59 of this act shall stand repealed on July 1, 2023."

Amendment Notes — The 2012 amendment reenacted and amended the section by adding the last six sentences in (4)(b).

The 2013 amendment added (4)(d).

The 2019 amendment, effective April 3, 2019, reenacted the section without change.

JUDICIAL DECISIONS

1. In general.

Claimant was obligated to repay an overpayment of unemployment compensation benefits because the claimant voluntarily relocated to another state but was paid benefits for two weeks following the departure. Jackson v. Miss. Dep't of Empl. Sec., 134 So. 3d 379, 2014 Miss. App. LEXIS 124 (Miss. Ct. App. 2014).

ARTICLE 3.

MISSISSIPPI DEPARTMENT OF EMPLOYMENT SECURITY.

Sec.

71-5-114. Special employment security administration fund [Repealed effective July 1, 2023].
71-5-116. Annual report tracking data from contractors to be used to improve workforce training programs.

§ 71-5-101. Organization [Repealed effective July 1, 2023].

HISTORY: Codes, 1942, §§ 7399, 7400; Laws, 1940, ch. 295; Laws, 1944, ch. 288, § 2; Laws, 1948, ch. 412, §§ 5a, 5b; Laws, 2004, ch. 572, § 11; reenacted without change, Laws, 2008, 1st Ex Sess, ch. 30, § 11; reenacted without change, Laws, 2010, ch. 559, § 10; reenacted without change, Laws, 2011, ch. 471, § 11; reenacted without change, Laws, 2012, ch. 515, § 11, eff from and after July 1, 2012; reenacted without change, Laws, 2019, ch. 451, § 11, eff from and after April 3, 2019.

Editor's Notes — Laws of 2004, ch. 572, § 60, as amended by Laws of 2008, 1st Ex Sess, ch. 30, § 58, as amended by Laws of 2010, ch. 559, § 58, as amended by Laws of 2011, ch. 471, § 59, as amended by Laws of 2012, ch. 515, § 58, as amended by Laws of 2019, ch. 451, § 58, and as amended by Laws of 2020, ch. 476, § 7, provides:

"SECTION 60. Sections 8 through 59 of this act shall stand repealed on July 1, 2023."

This section was reenacted without change by Laws of 2019, ch. 451, § 11, effective from and after April 3, 2019. Since the language of the section as it appears in the main volume is unaffected by the reenactment, it is not reprinted in this supplement.

Amendment Notes — The 2012 amendment reenacted the section without change.

The 2019 amendment, effective April 3, 2019, reenacted the section without change.

§ 71-5-107. Executive officer [Repealed effective July 1, 2023].

HISTORY: Codes, 1942, § 7403; Laws, 1940, ch. 295; Laws, 1944, ch. 288, § 2; Laws, 1948, ch. 412, § 5e; Laws, 2004, ch. 572, § 12; reenacted without change, Laws, 2008, 1st Ex Sess, ch. 30, § 12; reenacted without change, Laws, 2010, ch. 559, § 11; reenacted without change, Laws, 2011, ch. 471, § 12, reenacted without change, Laws, 2012, ch. 515, § 12, eff from and after July 1, 2012; reenacted without change, Laws, 2019, ch. 451, § 12, eff from and after April 3, 2019.

Editor's Notes — Laws of 2004, ch. 572, § 60, as amended by Laws of 2008, 1st Ex Sess, ch. 30, § 58, as amended by Laws of 2010, ch. 559, § 58, as amended by Laws of 2011, ch. 471, § 59, as amended by Laws of 2012, ch. 515, § 58, as amended by Laws of

2019, ch. 451, § 58, and as amended by Laws of 2020, ch. 476, § 7, provides:

"SECTION 60. Sections 8 through 59 of this act shall stand repealed on July 1, 2023."

This section was reenacted without change by Laws of 2019, ch. 451, § 12, effective from and after April 3, 2019. Since the language of the section as it appears in the main volume is unaffected by the reenactment, it is not reprinted in this supplement.

Amendment Notes — The 2012 amendment reenacted the section without change.

The 2019 amendment, effective April 3, 2019, reenacted the section without change.

§ 71-5-109. Board of review [Repealed effective July 1, 2023].

HISTORY: Codes, 1942, § 7404; Laws, 1940, ch. 295; Laws, 1944, ch. 288, § 2; Laws, 1948, ch. 412, § 5f; Laws, 2004, ch. 572, § 13; reenacted without change, Laws, 2008, 1st Ex Sess, ch. 30, § 13; reenacted without change, Laws, 2010, ch. 559, § 12; reenacted without change, Laws, 2011, ch. 471, § 13; reenacted without change, Laws, 2012, ch. 515, § 13, eff from and after July 1, 2012; reenacted without change, Laws, 2019, ch. 451, § 13, eff from and after April 3, 2019.

Editor's Notes — Laws of 2004, ch. 572, § 60, as amended by Laws of 2008, 1st Ex Sess, ch. 30, § 58, as amended by Laws of 2010, ch. 559, § 58, as amended by Laws of 2011, ch. 471, § 59, as amended by Laws of 2012, ch. 515, § 58, as amended by Laws of 2019, ch. 451, § 58, and as amended by Laws of 2020, ch. 476, § 7, provides:

"SECTION 60. Sections 8 through 59 of this act shall stand repealed on July 1, 2023."

This section was reenacted without change by Laws of 2019, ch. 451, § 13, effective from and after April 3, 2019. Since the language of the section as it appears in the main volume is unaffected by the reenactment, it is not reprinted in this supplement.

Amendment Notes — The 2012 amendment reenacted the section without change.

The 2019 amendment, effective April 3, 2019, reenacted the section without change.

§ 71-5-111. Employment security administration fund [Repealed effective July 1, 2023].

HISTORY: Codes, 1942, § 7421; Laws, 1940, ch. 295, § 11; Laws, 1948, ch. 412, § 8a; Laws, 1958, ch. 536, § 2(a); Laws, 2004, ch. 572, § 14; reenacted without change, Laws, 2008, 1st Ex Sess, ch. 30, § 14; reenacted without change, Laws, 2010, ch. 559, § 13; reenacted without change, Laws, 2011, ch. 471, § 14; reenacted without change, Laws, 2012, ch. 515, § 14, eff from and after July 1, 2012; reenacted without change, Laws, 2019, ch. 451, § 14, eff from and after April 3, 2019.

Editor's Notes — Laws of 2004, ch. 572, § 60, as amended by Laws of 2008, 1st Ex Sess, ch. 30, § 58, as amended by Laws of 2010, ch. 559, § 58, as amended by Laws of 2011, ch. 471, § 59, as amended by Laws of 2012, ch. 515, § 58, as amended by Laws of 2019, ch. 451, § 58, and as amended by Laws of 2020, ch. 476, § 7, provides:

"SECTION 60. Sections 8 through 59 of this act shall stand repealed on July 1, 2023."

This section was reenacted without change by Laws of 2019, ch. 451, § 14, effective from and after April 3, 2019. Since the language of the section as it appears in the main volume is unaffected by the reenactment, it is not reprinted in this supplement.

Amendment Notes — The 2012 amendment reenacted the section without change.

The 2019 amendment, effective April 3, 2019, reenacted the section without change.

§ 71-5-112. Funds to clear through state treasury; laws governing expenditures [Repealed effective July 1, 2023].

HISTORY: Laws, 1973, ch. 381, § 3; Laws, 1974, ch. 334; Laws, 1984, ch. 488,

§ 273; Laws, 2004, ch. 572, § 15; reenacted without change, Laws, 2008, 1st Ex Sess, ch. 30, § 15; reenacted and amended, Laws, 2010, ch. 559, § 14; reenacted without change, Laws, 2011, ch. 471, § 15; reenacted without change, Laws, 2012, ch. 515, § 15, eff from and after July 1, 2012; reenacted without change, Laws, 2019, ch. 451, § 15, eff from and after April 3, 2019.

Editor's Notes — Laws of 2004, ch. 572, § 60, as amended by Laws of 2008, 1st Ex Sess, ch. 30, § 58, as amended by Laws of 2010, ch. 559, § 58, as amended by Laws of 2011, ch. 471, § 59, as amended by Laws of 2012, ch. 515, § 58, as amended by Laws of 2019, ch. 451, § 58, and as amended by Laws of 2020, ch. 476, § 7, provides:

"SECTION 60. Sections 8 through 59 of this act shall stand repealed on July 1, 2023."

This section was reenacted without change by Laws of 2019, ch. 451, § 15, effective from and after April 3, 2019. Since the language of the section as it appears in the main volume is unaffected by the reenactment, it is not reprinted in this supplement.

Amendment Notes — The 2012 amendment reenacted the section without change.

The 2019 amendment, effective April 3, 2019, reenacted the section without change.

§ 71-5-113. Funds received from the Social Security Board [Repealed effective July 1, 2023].

HISTORY: Codes, 1942, § 7422; Laws, 1940, ch. 295, § 11; Laws, 1948, ch. 412, § 8b, c; Laws, 1958, ch. 536, § 2b, c; Laws, 2004, ch. 572, § 16; reenacted without change, Laws, 2008, 1st Ex Sess, ch. 30, § 16; reenacted without change, Laws, 2010, ch. 559, § 15; reenacted without change, Laws, 2011, ch. 471, § 16; reenacted without change, Laws, 2012, ch. 515, § 16, eff from and after July 1, 2012; reenacted without change, Laws, 2019, ch. 451, § 16, eff from and after April 3, 2019.

Editor's Notes — Laws of 2004, ch. 572, § 60, as amended by Laws of 2008, 1st Ex Sess, ch. 30, § 58, as amended by Laws of 2010, ch. 559, § 58, as amended by Laws of 2011, ch. 471, § 59, as amended by Laws of 2012, ch. 515, § 58, as amended by Laws of 2019, ch. 451, § 58, and as amended by Laws of 2020, ch. 476, § 7, provides:

"SECTION 60. Sections 8 through 59 of this act shall stand repealed on July 1, 2023."

This section was reenacted without change by Laws of 2019, ch. 451, § 16, effective from and after April 3, 2019. Since the language of the section as it appears in the main volume is unaffected by the reenactment, it is not reprinted in this supplement.

Amendment Notes — The 2012 amendment reenacted the section without change.

The 2019 amendment, effective April 3, 2019, reenacted the section without change.

§ 71-5-114. Special employment security administration fund [Repealed effective July 1, 2023].

There is created in the State Treasury a special fund, to be known as the "Special Employment Security Administration Fund," into which shall be deposited or transferred all interest, penalties and damages collected on and after July 1, 1982, pursuant to Sections 71-5-363 through 71-5-379 and all interest and penalties required to be deposited into the fund pursuant to Section 71-5-19(4)(b). Interest, penalties and damages collected on delinquent payments deposited during any calendar quarter in the clearing account in the Unemployment Trust Fund shall, as soon as practicable after the close of such calendar quarter, be transferred to the Special Employment Security Administration Fund. All monies in this fund shall be deposited, administered and

disbursed in the same manner and under the same conditions and requirements as is provided by law for other special funds in the State Treasury. The State Treasurer shall be liable on his official bond for the faithful performance of his duties in connection with the Special Employment Security Administration Fund under this chapter. Those monies may be expended for any programs for which the department has administrative responsibility but shall not be expended or made available for expenditure in any manner which would permit their substitution for (or permit a corresponding reduction in) federal funds which would, in the absence of those monies, be available to finance expenditures for the administration of the state unemployment compensation and employment service laws or any other laws directing the administration of any programs for which the department has the administrative responsibility. Nothing in this section shall prevent those monies in this fund from being used as a revolving fund to cover expenditures necessary and proper under the law for which federal funds have been duly requested but not yet received, subject to the charging of such expenditures against such funds when necessary. The monies in this fund may be used by the department for the payment of costs of administration of the employment security laws of this state which are found not to be or not to have been properly and validly chargeable against funds obtained from federal sources. All monies in this Special Employment Security Administration Fund shall be continuously available to the department for expenditure in accordance with the provisions of this chapter, and shall not lapse at any time. The monies in this fund are specifically made available to replace, as contemplated by Section 71-5-113, expenditures from the Employment Security Administration Fund established by Section 71-5-111, which have been found, because of any action or contingency, to have been lost or improperly expended.

The department, whenever it is of the opinion that the money in the Special Employment Security Administration Fund is more than ample to pay for all foreseeable needs for which such special fund is set up, may, by written order, order the transfer therefrom to the Unemployment Compensation Fund of such amount of money in the Special Employment Security Administration Fund as it deems proper, and the same shall thereupon be immediately transferred to the Unemployment Compensation Fund.

HISTORY: Laws, 1982, ch. 383, § 1; Laws, 2004, ch. 572, § 17; reenacted without change, Laws, 2008, 1st Ex Sess, ch. 30, § 17; reenacted without change, Laws, 2010, ch. 559, § 16; reenacted without change, Laws, 2011, ch. 471, § 17; reenacted and amended, Laws, 2012, ch. 515, § 17, eff from and after July 1, 2012; reenacted without change, Laws, 2019, ch. 451, § 17, eff from and after April 3, 2019.

Editor's Notes — Laws of 2004, ch. 572, § 60, as amended by Laws of 2008, 1st Ex Sess, ch. 30, § 58, as amended by Laws of 2010, ch. 559, § 58, as amended by Laws of 2011, ch. 471, § 59, as amended by Laws of 2012, ch. 515, § 58, as amended by Laws of 2019, ch. 451, § 58, and as amended by Laws of 2020, ch. 476, § 7, provides:

"SECTION 60. Sections 8 through 59 of this act shall stand repealed on July 1, 2023."

Amendment Notes — The 2012 amendment reenacted and amended the section in the first paragraph, by adding "and all interest and penalties required to be deposited into the fund pursuant to Section 71-5-19(4)(b)" to the end of the first sentence, and

rewriting the fifth sentence.

The 2019 amendment, effective April 3, 2019, reenacted the section without change.

§ 71-5-115. Duties and powers of executive director [Repealed effective July 1, 2023].

HISTORY: Codes, 1942, § 7405; Laws, 1940, ch. 295, § 9; Laws, 1948, ch. 412, § 6a; Laws, 1952, ch. 383, § 4a; Laws, 1958, ch. 533, § 6a; Laws, 1962, ch. 564, § 3a; Laws, 2004, ch. 572, § 18; reenacted without change, Laws, 2008, 1st Ex Sess, ch. 30, § 18; reenacted without change, Laws, 2010, ch. 559, § 17; reenacted without change, Laws, 2011, ch. 471, § 18; reenacted without change, Laws, 2012, ch. 515, § 18, eff from and after July 1, 2012; reenacted without change, Laws, 2019, ch. 451, § 18, eff from and after April 3, 2019.

Editor's Notes — Laws of 2004, ch. 572, § 60, as amended by Laws of 2008, 1st Ex Sess, ch. 30, § 58, as amended by Laws of 2010, ch. 559, § 58, as amended by Laws of 2011, ch. 471, § 59, as amended by Laws of 2012, ch. 515, § 58, as amended by Laws of 2019, ch. 451, § 58, and as amended by Laws of 2020, ch. 476, § 7, provides:

"SECTION 60. Sections 8 through 59 of this act shall stand repealed on July 1, 2023."

This section was reenacted without change by Laws of 2019, ch. 451, § 18, effective from and after April 3, 2019. Since the language of the section as it appears in the main volume is unaffected by the reenactment, it is not reprinted in this supplement.

Amendment Notes — The 2012 amendment reenacted the section without change.

The 2019 amendment, effective April 3, 2019, reenacted the section without change.

§ 71-5-116. Annual report tracking data from contractors to be used to improve workforce training programs.

The Mississippi Department of Employment Security will develop an annual report which tracks data received from contractors. Contractors will cooperate with the Mississippi Department of Employment Security to accumulate relevant data. Collected data and reports are intended solely to allow the Mississippi Department of Employment Security to improve workforce training programs, tailoring trainings to employer needs and hiring trends for in-demand jobs in Mississippi.

HISTORY: Laws, 2012, ch. 505, § 2, eff from and after passage (approved May 1, 2012).

§ 71-5-117. Regulations and general rules [Repealed effective July 1, 2023].

HISTORY: Codes, 1942, § 7406; Laws, 1940, ch. 295, § 9; Laws, 1948, ch. 412, § 6b; Laws, 1952, ch. 383, § 4b; Laws, 1958, ch. 533, § 6b; Laws, 1962, ch. 564, § 3b; Laws, 2004, ch. 572, § 19; reenacted without change, Laws, 2008, 1st Ex Sess, ch. 30, § 19; reenacted without change, Laws, 2010, ch. 559, § 18; reenacted without change, Laws, 2011, ch. 471, § 19; reenacted without change, Laws, 2012, ch. 515, § 19, eff from and after July 1, 2012; reenacted without change, Laws, 2019, ch. 451, § 19, eff from and after April 3, 2019.

Editor's Notes — Laws of 2004, ch. 572, § 60, as amended by Laws of 2008, 1st Ex Sess, ch. 30, § 58, as amended by Laws of 2010, ch. 559, § 58, as amended by Laws of 2011, ch. 471, § 59, as amended by Laws of 2012, ch. 515, § 58, as amended by Laws of

2019, ch. 451, § 58, and as amended by Laws of 2020, ch. 476, § 7, provides:

"SECTION 60. Sections 8 through 59 of this act shall stand repealed on July 1, 2023."

This section was reenacted without change by Laws of 2019, ch. 451, § 19, effective from and after April 3, 2019. Since the language of the section as it appears in the main volume is unaffected by the reenactment, it is not reprinted in this supplement.

Amendment Notes — The 2012 amendment reenacted the section without change.

The 2019 amendment, effective April 3, 2019, reenacted the section without change.

§ 71-5-119. Publication [Repealed effective July 1, 2023].

HISTORY: Codes, 1942, § 7407; Laws, 1940, ch. 295, § 9; Laws, 1948, ch. 412, § 6c; Laws, 1952, ch. 383, § 4c; Laws, 1958, ch. 533, § 6c; Laws, 1962, ch. 564, § 3c; Laws, 2004, ch. 572, § 20; Laws, 2007, ch. 606, § 5; reenacted without change, Laws, 2008, 1st Ex Sess, ch. 30, § 20; reenacted without change, Laws, 2010, ch. 559, § 19; reenacted without change, Laws, 2011, ch. 471, § 20; reenacted without change, Laws, 2012, ch. 515, § 20, eff from and after July 1, 2012; reenacted without change, Laws, 2019, ch. 451, § 20, eff from and after April 3, 2019.

Editor's Notes — Laws of 2004, ch. 572, § 60, as amended by Laws of 2008, 1st Ex Sess, ch. 30, § 58, as amended by Laws of 2010, ch. 559, § 58, as amended by Laws of 2011, ch. 471, § 59, as amended by Laws of 2012, ch. 515, § 58, as amended by Laws of 2019, ch. 451, § 58, and as amended by Laws of 2020, ch. 476, § 7, provides:

"SECTION 60. Sections 8 through 59 of this act shall stand repealed on July 1, 2023."

This section was reenacted without change by Laws of 2019, ch. 451, § 20, effective from and after April 3, 2019. Since the language of the section as it appears in the main volume is unaffected by the reenactment, it is not reprinted in this supplement.

Amendment Notes — The 2012 amendment reenacted the section without change.

The 2019 amendment, effective April 3, 2019, reenacted the section without change.

§ 71-5-121. Personnel [Repealed effective July 1, 2023].

HISTORY: Codes, 1942, § 7408; Laws, 1940, ch. 295, § 9; Laws, 1948, ch. 412, § 6d; Laws, 1952, ch. 383, § 4d; Laws, 1958, ch. 533, § 6d; Laws, 1962, ch. 564, § 3d; Laws, 1964, ch. 442, § 3; Laws, 1995, ch. 507, § 1; Laws, 2004, ch. 572, § 21; reenacted without change, Laws, 2008, 1st Ex Sess, ch. 30, § 21; reenacted without change, Laws, 2010, ch. 559, § 20; reenacted without change, Laws, 2011, ch. 471, § 21; reenacted without change, Laws, 2012, ch. 515, § 21, eff from and after July 1, 2012; reenacted without change, Laws, 2019, ch. 451, § 21, eff from and after April 3, 2019.

Editor's Notes — Laws of 2004, ch. 572, § 60, as amended by Laws of 2008, 1st Ex Sess, ch. 30, § 58, as amended by Laws of 2010, ch. 559, § 58, as amended by Laws of 2011, ch. 471, § 59, as amended by Laws of 2012, ch. 515, § 58, as amended by Laws of 2019, ch. 451, § 58, and as amended by Laws of 2020, ch. 476, § 7, provides:

"SECTION 60. Sections 8 through 59 of this act shall stand repealed on July 1, 2023."

This section was reenacted without change by Laws of 2019, ch. 451, § 21, effective from and after April 3, 2019. Since the language of the section as it appears in the main volume is unaffected by the reenactment, it is not reprinted in this supplement.

Amendment Notes — The 2012 amendment reenacted the section without change.

The 2019 amendment, effective April 3, 2019, reenacted the section without change.

§ 71-5-123. Advisory councils [Repealed effective July 1, 2023].

HISTORY: Codes, 1942, § 7409; Laws, 1940, ch. 295, § 9; Laws, 1948, ch. 412, § 6e; Laws, 1952, ch. 383, § 4e; Laws, 1958, ch. 533, § 6e; Laws, 1962, ch. 564, § 3e; Laws, 1989, ch. 320, § 1; Laws, 2004, ch. 572, § 22; reenacted without change, Laws, 2008, 1st Ex Sess, ch. 30, § 22; reenacted without change, Laws, 2010, ch. 559, § 21; reenacted without change, Laws, 2011, ch. 471, § 22; reenacted without change, Laws, 2012, ch. 515, § 22, eff from and after July 1, 2012; reenacted without change, Laws, 2019, ch. 451, § 22, eff from and after April 3, 2019.

Editor's Notes — Laws of 2004, ch. 572, § 60, as amended by Laws of 2008, 1st Ex Sess, ch. 30, § 58, as amended by Laws of 2010, ch. 559, § 58, as amended by Laws of 2011, ch. 471, § 59, as amended by Laws of 2012, ch. 515, § 58, as amended by Laws of 2019, ch. 451, § 58, and as amended by Laws of 2020, ch. 476, § 7, provides:

"SECTION 60. Sections 8 through 59 of this act shall stand repealed on July 1, 2023."

This section was reenacted without change by Laws of 2019, ch. 451, § 22, effective from and after April 3, 2019. Since the language of the section as it appears in the main volume is unaffected by the reenactment, it is not reprinted in this supplement.

Amendment Notes — The 2012 amendment reenacted the section without change.

The 2019 amendment, effective April 3, 2019, reenacted the section without change.

§ 71-5-125. Promotion of employment [Repealed effective July 1, 2023].

HISTORY: Codes, 1942, § 7410; Laws, 1940, ch. 295, § 9; Laws, 1948, ch. 412, § 6f; Laws, 1952, ch. 383, § 4f; Laws, 1958, ch. 533, § 6f; Laws, 1962, ch. 564, § 3f; Laws, 2004, ch. 572, § 23; reenacted without change, Laws, 2008, 1st Ex Sess, ch. 30, § 23; reenacted without change, Laws, 2010, ch. 559, § 22; reenacted without change, Laws, 2011, ch. 471, § 23; reenacted without change, Laws, 2012, ch. 515, § 23, eff from and after July 1, 2012; reenacted without change, Laws, 2019, ch. 451, § 23, eff from and after April 3, 2019.

Editor's Notes — Laws of 2004, ch. 572, § 60, as amended by Laws of 2008, 1st Ex Sess, ch. 30, § 58, as amended by Laws of 2010, ch. 559, § 58, as amended by Laws of 2011, ch. 471, § 59, as amended by Laws of 2012, ch. 515, § 58, as amended by Laws of 2019, ch. 451, § 58, and as amended by Laws of 2020, ch. 476, § 7, provides:

"SECTION 60. Sections 8 through 59 of this act shall stand repealed on July 1, 2023."

This section was reenacted without change by Laws of 2019, ch. 451, § 23, effective from and after April 3, 2019. Since the language of the section as it appears in the main volume is unaffected by the reenactment, it is not reprinted in this supplement.

Amendment Notes — The 2012 amendment reenacted the section without change.

The 2019 amendment, effective April 3, 2019, reenacted the section without change.

§ 71-5-127. Records and reports; confidentiality of information [Repealed effective July 1, 2023].

HISTORY: Codes, 1942, § 7411; Laws, 1940, ch. 295, § 9; Laws, 1948, ch. 412, § 6g(1); Laws, 1952, ch. 383, § 4g(1); Laws, 1958, ch. 533, § 6g(1); Laws, 1962, ch. 564, § 3g(1); Laws, 2004, ch. 572, § 24; Laws, 2007, ch. 606, § 6; reenacted without change, Laws, 2008, 1st Ex Sess, ch. 30, § 24; reenacted without change, Laws, 2010, ch. 559, § 23; reenacted without change, Laws, 2011, ch. 471, § 24; reenacted without change, Laws, 2012, ch. 515, § 24, eff from and

after July 1, 2012; reenacted without change, Laws, 2019, ch. 451, § 24, eff from and after April 3, 2019.

Editor's Notes — Laws of 2004, ch. 572, § 60, as amended by Laws of 2008, 1st Ex Sess, ch. 30, § 58, as amended by Laws of 2010, ch. 559, § 58, as amended by Laws of 2011, ch. 471, § 59, as amended by Laws of 2012, ch. 515, § 58, as amended by Laws of 2019, ch. 451, § 58, and as amended by Laws of 2020, ch. 476, § 7, provides:

"SECTION 60. Sections 8 through 59 of this act shall stand repealed on July 1, 2023."

This section was reenacted without change by Laws of 2019, ch. 451, § 24, effective from and after April 3, 2019. Since the language of the section as it appears in the main volume is unaffected by the reenactment, it is not reprinted in this supplement.

Amendment Notes — The 2012 amendment reenacted the section without change.

The 2019 amendment, effective April 3, 2019, reenacted the section without change.

OPINIONS OF THE ATTORNEY GENERAL

The Mississippi Department of Employment Security's alien labor program is exempt from the Mississippi Public Records Act, and thus, confidential in regards to requests made by third-party advocacy groups. Fitch, Nov. 18, 2005, A.G. Op. 05-0499.

§ 71-5-129. Destruction of useless records [Repealed effective July 1, 2023].

HISTORY: Codes, 1942, §§ 7411-01, 7411-02, 7411-03; Laws, 1944, ch. 290, § 1; Laws, 1950, ch. 418; Laws, 1952, ch. 390; Laws, 1970, ch. 504, § 1; Laws, 1981, ch. 501, § 25; Laws, 1987, ch. 318; Laws, 2004, ch. 572, § 25; reenacted without change, Laws, 2008, 1st Ex Sess, ch. 30, § 25; reenacted without change, Laws, 2010, ch. 559, § 24; reenacted without change, Laws, 2011, ch. 471, § 25; reenacted without change, Laws, 2012, ch. 515, § 25, eff from and after July 1, 2012; reenacted without change, Laws, 2019, ch. 451, § 25, eff from and after April 3, 2019.

Editor's Notes — Laws of 2004, ch. 572, § 60, as amended by Laws of 2008, 1st Ex Sess, ch. 30, § 58, as amended by Laws of 2010, ch. 559, § 58, as amended by Laws of 2011, ch. 471, § 59, as amended by Laws of 2012, ch. 515, § 58, as amended by Laws of 2019, ch. 451, § 58, and as amended by Laws of 2020, ch. 476, § 7, provides:

"SECTION 60. Sections 8 through 59 of this act shall stand repealed on July 1, 2023."

This section was reenacted without change by Laws of 2019, ch. 451, § 25, effective from and after April 3, 2019. Since the language of the section as it appears in the main volume is unaffected by the reenactment, it is not reprinted in this supplement.

Amendment Notes — The 2012 amendment reenacted the section without change.

The 2019 amendment, effective April 3, 2019, reenacted the section without change.

§ 71-5-131. Privileged communications [Repealed effective July 1, 2023].

HISTORY: Codes, 1942, § 7412; Laws, 1940, ch. 295, § 9; Laws, 1948, ch. 412, § 6g(2); Laws, 1952, ch. 383, § 4g(2); Laws, 1958, ch. 533, § 6g(2); Laws, 1962, ch. 564, § 3g(2); Laws, 2004, ch. 572, § 26; reenacted without change, Laws, 2008, 1st Ex Sess, ch. 30, § 26; reenacted without change, Laws, 2010, ch. 559, § 250; reenacted without change, Laws, 2011, ch. 471, § 26; reenacted without change, Laws, 2012, ch. 515, § 26, eff from and after July 1, 2012; reenacted without change, Laws, 2019, ch. 451, § 26, eff from and after April 3, 2019.

Editor's Notes — Laws of 2004, ch. 572, § 60, as amended by Laws of 2008, 1st Ex Sess, ch. 30, § 58, as amended by Laws of 2010, ch. 559, § 58, as amended by Laws of 2011, ch. 471, § 59, as amended by Laws of 2012, ch. 515, § 58, as amended by Laws of 2019, ch. 451, § 58, and as amended by Laws of 2020, ch. 476, § 7, provides:

"SECTION 60. Sections 8 through 59 of this act shall stand repealed on July 1, 2023."

This section was reenacted without change by Laws of 2019, ch. 451, § 26, effective from and after April 3, 2019. Since the language of the section as it appears in the main volume is unaffected by the reenactment, it is not reprinted in this supplement.

Amendment Notes — The 2012 amendment reenacted the section without change.

The 2019 amendment, effective April 3, 2019, reenacted the section without change.

§ 71-5-133. Failure to produce records [Repealed effective July 1, 2023].

HISTORY: Codes, 1942, § 7413; Laws, 1940, ch. 295, § 9; Laws, 1948, ch. 412, § 6h; Laws, 1952, ch. 383, § 4h; Laws, 1958, ch. 533, § 6h; Laws, 1962, ch. 564, § 3h; Laws, 2004, ch. 572, § 27; reenacted without change, Laws, 2008, 1st Ex Sess, ch. 30, § 27; reenacted without change, Laws, 2010, ch. 559, § 26; reenacted without change, Laws, 2011, ch. 471, § 27; reenacted without change, Laws, 2012, ch. 515, § 27, eff from and after July 1, 2012; reenacted without change, Laws, 2019, ch. 451, § 27, eff from and after April 3, 2019.

Editor's Notes — Laws of 2004, ch. 572, § 60, as amended by Laws of 2008, 1st Ex Sess, ch. 30, § 58, as amended by Laws of 2010, ch. 559, § 58, as amended by Laws of 2011, ch. 471, § 59, as amended by Laws of 2012, ch. 515, § 58, as amended by Laws of 2019, ch. 451, § 58, and as amended by Laws of 2020, ch. 476, § 7, provides:

"SECTION 60. Sections 8 through 59 of this act shall stand repealed on July 1, 2023."

This section was reenacted without change by Laws of 2019, ch. 451, § 27, effective from and after April 3, 2019. Since the language of the section as it appears in the main volume is unaffected by the reenactment, it is not reprinted in this supplement.

Amendment Notes — The 2012 amendment reenacted the section without change.

The 2019 amendment, effective April 3, 2019, reenacted the section without change.

§ 71-5-135. Failure to make reports [Repealed effective July 1, 2023].

HISTORY: Codes, 1942, § 7414; Laws, 1940, ch. 295, § 9; Laws, 1948, ch. 412, § 6i; Laws, 1952, ch. 383, § 4i; Laws, 1958, ch. 533, § 6i; Laws, 1962, ch. 564, § 3i; Laws, 1992, ch. 362, § 1; Laws, 2004, ch. 572, § 28; Laws, 2007, ch. 606, § 7; reenacted without change, Laws, 2008, 1st Ex Sess, ch. 30, § 28; reenacted without change, Laws, 2010, ch. 559, § 27; reenacted without change, Laws, 2011, ch. 471, § 28; reenacted without change, Laws, 2012, ch. 515, § 28, eff from and after July 1, 2012; reenacted without change, Laws, 2019, ch. 451, § 28, eff from and after April 3, 2019.

Editor's Notes — Laws of 2004, ch. 572, § 60, as amended by Laws of 2008, 1st Ex Sess, ch. 30, § 58, as amended by Laws of 2010, ch. 559, § 58, as amended by Laws of 2011, ch. 471, § 59, as amended by Laws of 2012, ch. 515, § 58, as amended by Laws of 2019, ch. 451, § 58, and as amended by Laws of 2020, ch. 476, § 7, provides:

"SECTION 60. Sections 8 through 59 of this act shall stand repealed on July 1, 2023."

This section was reenacted without change by Laws of 2019, ch. 451, § 28, effective from and after April 3, 2019. Since the language of the section as it appears in the main volume is unaffected by the reenactment, it is not reprinted in this supplement.

Amendment Notes — The 2012 amendment reenacted the section without change. The 2019 amendment, effective April 3, 2019, reenacted the section without change.

§ 71-5-137. Oaths and witnesses [Repealed effective July 1, 2023].

HISTORY: Codes, 1942, § 7415; Laws, 1940, ch. 295, § 9; Laws, 1948, ch. 412, § 6j; Laws, 1952, ch. 383, § 4j; Laws, 1958, ch. 533, § 6j; Laws, 1962, ch. 564, § 3j; Laws, 2004, ch. 572, § 29; reenacted without change, Laws, 2008, 1st Ex Sess, ch. 30, § 29; reenacted without change, Laws, 2010, ch. 559, § 28; reenacted without change, Laws, 2011, ch. 471, § 29, Laws, 2012, ch. 515, § 29, eff from and after July 1, 2012; reenacted without change, Laws, 2019, ch. 451, § 29, eff from and after April 3, 2019.

Editor's Notes — Laws of 2004, ch. 572, § 60, as amended by Laws of 2008, 1st Ex Sess, ch. 30, § 58, as amended by Laws of 2010, ch. 559, § 58, as amended by Laws of 2011, ch. 471, § 59, as amended by Laws of 2012, ch. 515, § 58, as amended by Laws of 2019, ch. 451, § 58, and as amended by Laws of 2020, ch. 476, § 7, provides:

"SECTION 60. Sections 8 through 59 of this act shall stand repealed on July 1, 2023."

This section was reenacted without change by Laws of 2019, ch. 451, § 29, effective from and after April 3, 2019. Since the language of the section as it appears in the main volume is unaffected by the reenactment, it is not reprinted in this supplement.

Amendment Notes — The 2012 amendment reenacted the section without change. The 2019 amendment, effective April 3, 2019, reenacted the section without change.

§ 71-5-139. Subpoenas [Repealed effective July 1, 2023].

HISTORY: Codes, 1942, § 7416; Laws, 1940, ch. 295, § 9; Laws, 1948, ch. 412, § 6k; Laws, 1952, ch. 383, § 4k; Laws, 1958, ch. 533, § 6k; Laws, 1962, ch. 564, § 3k; Laws, 2004, ch. 572, § 30; reenacted without change, Laws, 2008, 1st Ex Sess, ch. 30, § 30; reenacted without change, Laws, 2010, ch. 559, § 29; reenacted without change, Laws, 2011, ch. 471, § 30; reenacted without change, Laws, 2012, ch. 515, § 30, eff from and after July 1, 2012; reenacted without change, Laws, 2019, ch. 451, § 30.

Editor's Notes — Laws of 2004, ch. 572, § 60, as amended by Laws of 2008, 1st Ex Sess, ch. 30, § 58, as amended by Laws of 2010, ch. 559, § 58, as amended by Laws of 2011, ch. 471, § 59, as amended by Laws of 2012, ch. 515, § 58, as amended by Laws of 2019, ch. 451, § 58, and as amended by Laws of 2020, ch. 476, § 7, provides:

"SECTION 60. Sections 8 through 59 of this act shall stand repealed on July 1, 2023."

This section was reenacted without change by Laws of 2019, ch. 451, § 30, effective from and after April 3, 2019. Since the language of the section as it appears in the main volume is unaffected by the reenactment, it is not reprinted in this supplement.

Amendment Notes — The 2012 amendment reenacted the section without change. The 2019 amendment, effective April 3, 2019, reenacted the section without change.

§ 71-5-141. Protection against self-incrimination [Repealed effective July 1, 2023].

HISTORY: Codes, 1942, § 7417; Laws, 1940, ch. 295, § 9; Laws, 1948, ch. 412, § 6l; Laws, 1952, ch. 383, § 4l; Laws, 1958, ch. 533, § 6l; Laws, 1962, ch. 564, § 3l; Laws, 2004, ch. 572, § 31; reenacted without change, Laws, 2008, 1st Ex Sess, ch. 30, § 31; reenacted without change, Laws, 2010, ch. 559, § 30; reenacted

without change, Laws, 2011, ch. 471, § 31; reenacted without change, Laws, 2012, ch. 515, § 31, eff from and after July 1, 2012; reenacted without change, Laws, 2019, ch. 451, § 31, eff from and after April 3, 2019.

Editor's Notes — Laws of 2004, ch. 572, § 60, as amended by Laws of 2008, 1st Ex Sess, ch. 30, § 58, as amended by Laws of 2010, ch. 559, § 58, as amended by Laws of 2011, ch. 471, § 59, as amended by Laws of 2012, ch. 515, § 58, as amended by Laws of 2019, ch. 451, § 58, and as amended by Laws of 2020, ch. 476, § 7, provides:

"SECTION 60. Sections 8 through 59 of this act shall stand repealed on July 1, 2023."

This section was reenacted without change by Laws of 2019, ch. 451, § 30, effective from and after April 3, 2019. Since the language of the section as it appears in the main volume is unaffected by the reenactment, it is not reprinted in this supplement.

Amendment Notes — The 2012 amendment reenacted the section without change.

The 2019 amendment, effective April 3, 2019, reenacted the section without change.

§ 71-5-143. State-federal cooperation [Repealed effective July 1, 2023].

HISTORY: Codes, 1942, § 7418; Laws, 1940, ch. 295, § 9; Laws, 1948, ch. 412, § 6m; Laws, 1952, ch. 383, § 4m; Laws, 1958, ch. 533, § 6m; Laws, 1962, ch. 564, § 3m; Laws, 2004, ch. 572, § 32; reenacted without change, Laws, 2008, 1st Ex Sess, ch. 30, § 32; reenacted without change, Laws, 2010, ch. 559, § 31; reenacted without change, Laws, 2011, ch. 471, § 32; reenacted without change, Laws, 2012, ch. 515, § 32, eff from and after July 1, 2012; reenacted without change, Laws, 2019, ch. 451, § 32, eff from and after April 3, 2019.

Editor's Notes — Laws of 2004, ch. 572, § 60, as amended by Laws of 2008, 1st Ex Sess, ch. 30, § 58, as amended by Laws of 2010, ch. 559, § 58, as amended by Laws of 2011, ch. 471, § 59, as amended by Laws of 2012, ch. 515, § 58, as amended by Laws of 2019, ch. 451, § 58, and as amended by Laws of 2020, ch. 476, § 7, provides:

"SECTION 60. Sections 8 through 59 of this act shall stand repealed on July 1, 2023."

This section was reenacted without change by Laws of 2019, ch. 451, § 32, effective from and after April 3, 2019. Since the language of the section as it appears in the main volume is unaffected by the reenactment, it is not reprinted in this supplement.

Amendment Notes — The 2012 amendment reenacted the section without change.

The 2019 amendment, effective April 3, 2019, reenacted the section without change.

ARTICLE 5.

EMPLOYMENT SERVICE.

§ 71-5-201. State employment service [Repealed effective July 1, 2023].

HISTORY: Codes, 1942, § 7419; Laws, 1940, ch. 295; Laws, 1944, ch. 288, § 3; Laws, 1948, ch. 412, § 7a; Laws, 1971, ch. 519, § 12; Laws, 1972, ch. 425, § 1; Laws, 2004, ch. 572, § 33; reenacted without change, Laws, 2008, 1st Ex Sess, ch. 30, § 33; reenacted without change, Laws, 2010, ch. 559, § 32; reenacted without change, Laws, 2011, ch. 471, § 33; reenacted without change, Laws, 2012, ch. 515, § 33, eff from and after July 1, 2012; reenacted without change, Laws, 2019, ch. 451, § 33, eff from and after April 3, 2019.

Editor's Notes — Laws of 2004, ch. 572, § 60, as amended by Laws of 2008, 1st Ex Sess, ch. 30, § 58, as amended by Laws of 2010, ch. 559, § 58, as amended by Laws of 2011, ch. 471, § 59, as amended by Laws of 2012, ch. 515, § 58, as amended by Laws of

2019, ch. 451, § 58, and as amended by Laws of 2020, ch. 476, § 7, provides:

"SECTION 60. Sections 8 through 59 of this act shall stand repealed on July 1, 2023."

This section was reenacted without change by Laws of 2019, ch. 451, § 33, effective from and after April 3, 2019. Since the language of the section as it appears in the main volume is unaffected by the reenactment, it is not reprinted in this supplement.

Amendment Notes — The 2012 amendment reenacted without change.

The 2019 amendment, effective April 3, 2019, reenacted the section without change.

ARTICLE 7.

CONTRIBUTIONS.

Sec.

71-5-351. Payment of contributions; participation in the Mississippi Level Payment Plan (MLPP).
71-5-353. Rate of contributions; reduction in contribution rate for certain employers; distribution of contributions; suspension of Workforce Enhancement Training contributions under certain circumstances.
71-5-355. Modified rates.
71-5-357. Regulations governing nonprofit organizations [Repealed effective July 1, 2023].
71-5-361. Period, election, and termination.
71-5-367. Collection by warrant.
71-5-389. Setoff against tax refunds for debts owed to Mississippi Department of Employment Security; submission of debts to Department of Revenue; notice to debtor; transfer of funds to Department of Revenue; hearings; appeals; confidentiality.

§ 71-5-351. Payment of contributions; participation in the Mississippi Level Payment Plan (MLPP).

(1) Contributions shall accrue and become payable by each employer for each calendar year in which he is subject to this chapter. Such contributions shall become due and be paid by each employer to the department for the fund each calendar quarter on or before the last day of the month next succeeding each calendar quarter in which the contributions accrue unless the employer has filed an election with the department to participate in the Mississippi Level Payment Plan (MLPP) and complies with the provision of the MLPP. The department may extend the due date of such contributions if the due date falls on a Saturday, Sunday or state or federal holiday. Such contributions shall not be deducted, in whole or in part, from the wages of individuals in such employer's employ.

(2)(a) Any employer who is a newly subject employer or any employer who meets the requirements of participation in the MLPP shall be allowed one (1) participation election per year. The department may by regulation establish exceptions to this rule as appropriate. The department shall establish by regulation the requirements for computation and adjustment of compensation and shall compute the amount of payments that will be made quarterly and notify each employer before the first tax payment is due for the year. Equal payments will be made for calendar quarters ending March, June and

September and settlement will be made for any overage or shortage at the time payment is due for the December quarter.

(b) An employer who meets the following criteria may participate in the MLPP:

(i) The employer has not been delinquent in filing unemployment reports or paying unemployment taxes to the department during the last two (2) calendar years and must make current all other delinquent unemployment taxes and reports;

(ii) The employer has been an employer subject to the unemployment laws of the State of Mississippi, or in accordance with department regulations regarding MLPP, for at least twelve (12) months prior to the year the employer starts participating;

(iii) The employer must agree to file reports through the department's online system or other agency prescribed electronic facility and pay electronically;

(iv) The employer remains current in filing and paying taxes; and

(v) The employer must make the election by April 1 of the year.

(c) Employers who participate in the MLPP and pay their contribution by bank draft shall utilize the pay schedule provided for in this paragraph. The pay schedule shall be as follows:

(i) January to March due date May 15;

(ii) April to June due date August 15;

(iii) July to September due date November 15; and

(iv) October to December due date January 31.

(d) In the event the computed Size of Fund Index (SOFI) for any rate year computation falls below one percent (1.0%), the additional fifteen (15) days' delay provided for bank draft customers will be suspended for that year.

(3) For purposes of payment of contributions on remuneration paid to individuals, if two (2) or more related corporations concurrently employ the same individual and compensate such individual through a common paymaster which is one of such corporations, each such corporation shall be considered to have paid as remuneration to such individual only the amounts actually disbursed by it to such individual and shall not be considered to have paid as remuneration to such individual such amounts actually disbursed to such individual by another of such corporations.

In the payment of any contributions, a fractional part of a cent shall be disregarded unless it amounts to One-half Cent (½¢) or more, in which case it shall be increased to One Cent (1¢).

(4) For the purposes of this section and Sections 71-5-353, 71-5-357 and 71-5-359, taxable wages shall not include that part of remuneration which, after remuneration equal to Seven Thousand Dollars ($7,000.00) through December 31, 2010, and Fourteen Thousand Dollars ($14,000.00) thereafter, has been paid in a calendar year to an individual by an employer or his predecessor with respect to employment during any calendar year, is paid to such individual by such employer during such calendar year unless that part

of the remuneration is subject to a tax under a federal law imposing a tax against which credit may be taken for contributions required to be paid into a state employment fund. For the purposes of this section, the term "employment" shall include service constituting employment under any unemployment compensation law of another state.

(5) Absent evidence of willful or fraudulent attempt to avoid taxation, the effective date of liability of an employer or assessment of liability for covered employment against an employer shall not occur for any period preceding the three (3) calendar years before the date of registration or assessment, unless said three-year limitations period is waived by the employer.

(6) The executive director may grant a reasonable extension of time beyond the statutory due date within which to file any report required by this section to an employer located in an area included in a declaration of an emergency or disaster by the President or the Governor. The executive director may, in his discretion, recognize extensions of time authorized and granted by the Internal Revenue Service for the filing of tax returns.

HISTORY: Codes, 1942, § 7390; Laws, 1940, ch. 295, § 5; Laws, 1948, ch. 412, § 4a; Laws, 1950, ch. 454, § 1a; Laws, 1952, ch. 383, § 2a; Laws, 1956, ch. 404, § 2a; Laws, 1958, ch. 533, § 5a; Laws, 1962, ch. 564, § 2a; Laws, 1964, ch. 442, § 2a; Laws, 1971, ch. 519, § 6; Laws, 1977, ch. 497, § 2; Laws, 1983, ch. 371, § 2; Laws, 1985, ch. 413; Laws, 1998, ch. 331, § 2; Laws, 2001, ch. 431, § 1; Laws, 2005, ch. 437, § 4; Laws, 2010, ch. 504, § 1; Laws, 2013, ch. 309, § 5, eff from and after passage (approved March 6, 2013).

Amendment Notes — The 2013 amendment added (6).

§ 71-5-353. Rate of contributions; reduction in contribution rate for certain employers; distribution of contributions; suspension of Workforce Enhancement Training contributions under certain circumstances.

(1)(a) Each employer shall pay unemployment insurance contributions equal to five and four-tenths percent (5.4%) of taxable wages paid by him each calendar year, except as may be otherwise provided in Section 71-5-361 and except that each newly subject employer shall pay unemployment insurance contributions at the rate of one percent (1%) of taxable wages, for his first year of liability, one and one-tenth percent (1.1%) of taxable wages for his second year of liability, and one and two-tenths percent (1.2%) of taxable wages for his third and subsequent years of liability unless the employer's experience-rating record has been chargeable throughout at least the twelve (12) consecutive calendar months ending on the most recent computation date at the time the rate for a year is determined; thereafter the employer's contribution rate shall be determined in accordance with the provisions of Section 71-5-355.

(b) Notwithstanding the newly subject employer contribution rate provided for in paragraph (a) of this subsection, the contribution rate of all newly subject employers shall be reduced by seven one-hundredths of one

percent (.07%) for calendar year 2013 only. The contribution rate of all newly subject employers shall be reduced by three one-hundredths of one percent (.03%) for calendar year 2014 only. For purposes of this chapter, "newly subject employers" means employers whose unemployment insurance experience-rating record has not been chargeable throughout at least the twelve (12) consecutive calendar months ending on the most recent computation date at the time the contribution rate for a year is determined.

(2)(a)(i) There is hereby created in the Treasury of the State of Mississippi special funds to be known as the "Mississippi Workforce Enhancement Training Fund" and the "Mississippi Works Fund" which consist of funds collected pursuant to subsection (3) of this section.

(ii) Funds collected shall initially be deposited into the Mississippi Department of Employment Security bank account for clearing contribution collections and subsequently appropriate amounts shall be transferred to the Mississippi Workforce Investment and Training Fund Holding Account described in Section 71-5-453. In the event any employer pays an amount insufficient to cover the total contributions due, the amounts due shall be satisfied in the following order:

1. Unemployment contributions;

2. Mississippi Workforce Enhancement Training contributions, State Workforce Investment contributions and the Mississippi Works contributions, known collectively as the Mississippi Workforce Investment and Training contributions, on a pro rata basis;

3. Interest and damages; then

4. Legal and processing costs.

The amount of unemployment insurance contributions due for any period will be the amount due according to the actual computations unless the employer is participating in the MLPP. In that event, the amount due is the MLPP amount computed by the department.

Cost of collection and administration of the Mississippi Workforce Enhancement Training contribution, the State Workforce Investment contribution and the Mississippi Works contribution shall be allocated based on a plan approved by the United States Department of Labor (USDOL). The Mississippi Community College Board shall pay the cost of collecting the Mississippi Workforce Enhancement Training contributions, the State Workforce Investment Board shall pay the cost of collecting the State Workforce Investment contributions and the Mississippi Department of Employment Security shall pay the cost of collecting the Mississippi Works contributions. Payments shall be made semiannually with the cost allocated to each based on a USDOL approved plan on a pro rata basis, for periods ending in June and December of each year. Payment shall be made by each organization to the department no later than sixty (60) days after the billing date. Cost shall be allocated under the USDOL's approved plan and in the same ratio as each contribution type represents to the total authorized by subparagraph (ii)2 of this paragraph to be collected for the period.

(b) Mississippi Workforce Enhancement Training contributions and State Workforce Investment contributions shall be distributed as follows:

(i) For calendar year 2014, ninety-four and seventy-five one-hundredths percent (94.75%) shall be distributed to the Mississippi Workforce Enhancement Training Fund and the remainder shall be distributed to the State Workforce Investment Board bank account;

(ii) For calendar years subsequent to calendar year 2014, ninety-three and seventy-five one-hundredths percent (93.75%) shall be distributed to the Mississippi Workforce Enhancement Training Fund and the remainder shall be distributed to the State Workforce Investment Board bank account;

(iii) Workforce Enhancement Training contributions and State Workforce Investment contributions for calendar years 2014 and 2015 shall be distributed as provided in subparagraphs (i) and (ii) of this paragraph regardless of when the contributions were collected.

(c) All contributions collected for the State Workforce Enhancement Training Fund, the State Workforce Investment Fund and the Mississippi Works Fund will be initially deposited into the Mississippi Department of Employment Security bank account for clearing contribution collections and subsequently transferred to the Workforce Investment and Training Holding Account and will be held by the Mississippi Department of Employment Security in such account for a period of not less than thirty (30) days. After such period, the Mississippi Workforce Enhancement Training contributions shall be transferred to the Mississippi Community College Board Treasury Account, with oversight provided by the Mississippi Office of Workforce Development, the State Workforce Investment contributions and the Mississippi Works contributions shall be transferred to the Mississippi Department of Employment Security Mississippi Works Treasury Account in the same ratio as each contribution type represents to the total authorized by paragraph (a)(ii)2 of this subsection to be collected for the period and within the time frame determined by the department; however, except in cases of extraordinary circumstances, these funds shall be transferred within fifteen (15) days. Interest earnings or interest credits on deposit amounts in the Workforce Investment and Training Holding Account shall be retained in the account to pay the banking costs of the account. If after the period of twelve (12) months interest earnings less banking costs exceeds Ten Thousand Dollars ($10,000.00), such excess amounts shall be transferred to the respective accounts within thirty (30) days following the end of each calendar year on the basis described in paragraph (b) of this subsection. Interest earnings and/or interest credits for the State Workforce Investments funds shall be used for the payment of banking costs and excess amounts shall be used in accordance with the rules and regulations of the State Workforce Investment Board expenditure policies.

(d) All enforcement procedures for the collection of delinquent unemployment contributions contained in Sections 71-5-363 through 71-5-383 shall be applicable in all respects for collections of delinquent unemployment

insurance contributions designated for the Unemployment Compensation Fund, the Mississippi Workforce Enhancement Training Fund, the State Workforce Investment Board Fund and the Mississippi Works Fund.

(e)(i) Except as otherwise provided for in this subparagraph (i), all monies deposited into the Mississippi Workforce Enhancement Training Fund Treasury Account shall be directed by the Mississippi Office of Workforce Development, in collaboration with the Mississippi Community College Board, in accordance with the Workforce Training Act of 1994 (Section 37-153-1 et seq.) and under policies approved by the Mississippi Office of Workforce Development for the following purposes: to provide training in collaboration with the Mississippi Community College Board and individual community and junior colleges to employers and employees in order to enhance employee productivity. Such training may be subject to a minimal administrative fee to be paid from the Mississippi Workforce Enhancement Training Fund as established by the Office of Workforce Development. The initial priority of these funds shall be for the benefit of existing businesses located within the state. Employers may request training for existing employees and/or newly hired employees from the Mississippi Office of Workforce Development. The office, in consultation with the Mississippi Community College Board, will be responsible for approving the training. A portion of the funds collected for the Mississippi Workforce Enhancement Training Fund shall be used for the development of performance measures to measure the effectiveness of the use of the Mississippi Workforce Enhancement Training Fund dollars. These performance measures shall be uniform for all training projects and shall be reported to the Governor, Lieutenant Governor, Speaker of the House, and members of the Legislature. Nothing in this section or elsewhere in law shall be interpreted as giving the Office of Workforce Development or State Workforce Investment Board authority to direct the Mississippi Community College Board or individual community or junior colleges on how to expend other funds, aside from funds appropriated to the Mississippi Workforce Enhancement Training Fund and Mississippi Works Fund, appropriated or received for workforce training. The Mississippi Office of Workforce Development, Mississippi Community College Board, individual community or junior colleges, State Workforce Investment Board and other agencies implementing or coordinating state-funded workforce development programs under state law shall cooperate with each other to promote effective workforce training in Mississippi, under the direction of the office. Any subsequent changes to these performance measures shall also be reported to the Governor, Lieutenant Governor, Speaker of the House, and members of the Legislature. A performance report for each training project and community college, based upon these measures, shall be submitted annually to the Governor, Lieutenant Governor, Speaker of the House, and members of the Legislature.

(ii) Except as otherwise provided in this paragraph (e), all funds deposited into the State Workforce Investment Board bank account shall

be used for administration of State Workforce Investment Board business, the Office of Workforce Development, grants related to training, and other projects as determined appropriate by the State Workforce Investment Board and shall be nonexpiring. Policies for grants and other projects shall be approved through a majority vote of the State Workforce Investment Board.

(iii) All funds deposited into the Mississippi Department of Employment Security Mississippi Works Fund shall be disbursed exclusively by the Executive Director of the Mississippi Department of Employment Security, in accordance with the rules and regulations promulgated by the Office of Workforce Development in support of workforce training activities approved by the Mississippi Office of Workforce Development in support of economic development activities. Funds allocated by the executive director under this subparagraph (iii) shall only be utilized for the training of unemployed persons, for immediate training needs for the net new jobs created by an employer, for the retention of jobs or to create a work-ready applicant pool of Mississippians with credentials and/or post-secondary education in accordance with the state's Workforce Investment and Opportunity Act plan. The Executive Director of the Office of Workforce Development shall give priority to the training of unemployed persons. Not more than twenty-five percent (25%) of the funds may be allocated for the retention of jobs and/or creation of a work-ready applicant pool. Not more than Five Hundred Thousand Dollars ($500,000.00) may be allocated annually for the training needs of any one (1) employer. The Mississippi Office of Workforce Development, in collaboration with the Mississippi Public Community College System and its partners, shall be the primary entity to facilitate training. In no case shall these funds be used to supplant workforce funds available from any other sources, including, but not limited to, local, state or federal sources that are available for workforce training and development. Training conducted utilizing these Mississippi Works funds may be subject to a minimal administrative fee to be paid from the Mississippi Works Fund as authorized by the Mississippi Office of Workforce Development. All costs associated with the administration of these funds shall be reimbursed to the Mississippi Department of Employment Security from the Mississippi Works Fund.

(iv)1. The Department of Employment Security shall be the fiscal agent for the receipt and disbursement of all funds in the State Workforce Investment Board bank account, subject to the administrative oversight of the Office of Workforce Development.

2. In managing the State Workforce Investment Board bank account, the Office of Workforce Development, in coordination with the Mississippi Department of Employment Security as fiscal agent, shall ensure that any funds expended for contractual services rendered to the Office of Workforce Development shall be paid only to service providers who have been selected on a competitive basis. Any contract for services

entered into using funds from the Workforce Investment Fund bank account shall contain the deliverables stated in terms that allow for the assessment of work performance against measurable performance standards and shall include milestones for completion of each deliverable under the contract. For each contract for services entered into by the Office of Workforce Development, the office shall develop a quality assurance surveillance plan that specifies quality control obligations of the contractor as well as measurable inspection and acceptance criteria corresponding to the performance standards contained in the contract's statement of work.

3. Any commodities procured for the office shall be procured in accordance with the provisions of Section 31-7-13.

(v) In addition to other expenditures, the Office of Workforce Development shall expend from the State Workforce Investment Board bank account for the use and benefit of the Office of Workforce Development, such funds as are necessary to prepare and develop a study of workforce development needs that will consist of the following:

1. An identification of the state's workforce development needs through a well-documented quantitative and qualitative analysis of:

a. The current and projected workforce training needs of existing and identified potential Mississippi industries, with priority given to assessing the needs of existing in-state industry and business. Where possible, the analysis should include a verification and expansion of existing information previously developed by workforce training and service providers, as well as analysis of existing workforce data, such as the data collected through the Statewide Longitudinal Data System.

b. The needs of the state's workers and residents requiring additional workforce training to improve their work skills in order to compete for better employment opportunities, including a priority-based analysis of the critical factors currently limiting the state's ability to provide a trained and ready workforce.

c. The needs of workforce service and training providers in improving their ability to offer industry-relevant training, including an assessment of the practical limits of keeping training programs on the leading edge and eliminating those programs with marginal workforce relevance.

2. An assessment of Mississippi's current workforce development service delivery structure relative to the needs quantified in this subparagraph, including:

a. Development of a list of strengths/weaknesses/opportunities/threats (SWOT) of the current workforce development delivery system relative to the identified needs;

b. Identification of strategic options for workforce development services based on the results of the SWOT analysis; and

c. Development of results-oriented measures for each option that

can be baselined and, if implemented, tracked over time, with quantifiable milestones and goals.

3. Preparation of a report presenting all subjects set out in this subparagraph to be delivered to the Lieutenant Governor, Speaker of the House of Representatives, Chairman of the Senate Finance Committee and Chairman of the House Appropriations Committee no later than February 1, 2015.

4. Following the preparation of the report, the State Workforce Investment Board shall make a recommendation to the House and Senate Appropriations Committees on future uses of funds deposited to the State Workforce Investment Fund account. Such future uses may include:

a. The development of promotion strategies for workforce development programs;

b. Initiatives designed to reduce the state's dropout rate, including the development of a statewide career awareness program;

c. The long-term monitoring of the state's workforce development programs to determine whether they are addressing the needs of business, industry, and the workers of the state; and

d. The study of the potential restructuring of the state's workforce programs and delivery systems.

(3)(a)(i) Mississippi Workforce Enhancement Training contributions and State Workforce Investment contributions shall be collected at the following rates:

1. For calendar year 2014 only, the rate of nineteen one-hundredths of one percent (.19%) based upon taxable wages of which eighteen one-hundredths of one percent (.18%) shall be the Workforce Enhancement Training contribution and one-hundredths of one percent (.01%) shall be the State Workforce Investment contribution; and

2. For calendar year 2015 only, the rate of sixteen one-hundredths of one percent (.16%), based upon taxable wages of which fifteen one-hundredths of one percent (.15%) shall be the Workforce Enhancement Training contribution and one-hundredths of one percent (.01%) shall be the State Workforce Investment contribution.

(ii) Mississippi Workforce Enhancement Training contributions, State Workforce Investment contributions and Mississippi Works contributions shall be collected at the following rates:

1. For calendar year 2016 only, at a rate of twenty-four one-hundredths percent (.24%), based upon taxable wages, of which fifteen one-hundredths percent (.15%) shall be the Workforce Enhancement Training contribution, one-hundredths of one percent (.01%) shall be the State Workforce Investment contribution and eight one-hundredths percent (.08%) shall be the Mississippi Works contribution.

2. For calendar years subsequent to calendar year 2016, at a rate of twenty one-hundredths percent (.20%), based upon taxable wages, of which fifteen one-hundredths percent (.15%) shall be the Workforce

Enhancement Training contribution, one-hundredths of one percent (.01%) shall be the State Workforce Investment contribution and four one-hundredths percent (.04%) shall be the Mississippi Works contribution. The Mississippi Works contribution shall be collected for calendar years in which the general experience ratio, adjusted on the basis of the trust fund adjustment factor and reduced by fifty percent (50%), results in a general experience rate of less than two-tenths percent (.2%). In all other years the Mississippi Works contribution shall not be in effect.

(iii) The Mississippi Workforce Enhancement Training Fund contribution, the State Workforce Investment contribution and the Mississippi Works contribution shall be in addition to the general experience rate plus the individual experience rate of all employers but shall not be charged to reimbursing or rate-paying political subdivisions or institutions of higher learning, or reimbursing nonprofit organizations, as described in Sections 71-5-357 and 71-5-359.

(b) All Mississippi Workforce Enhancement Training contributions, State Workforce Investment contributions and Mississippi Works contributions collected shall be deposited initially into the Mississippi Department of Employment Security bank account for clearing contribution collections and shall within two (2) business days be transferred to the Workforce Investment and Training Holding Account. Any Mississippi Workforce Enhancement Training Fund and/or State Workforce Investment Board bank account and/or Mississippi Works Fund transactions from the Mississippi Department of Employment Security bank account for clearing contribution collections that are deposited into the Workforce Investment and Training Fund Holding Account and are not honored by a financial institution will be transferred back to the Mississippi Department of Employment Security bank account for clearing contribution collections out of funds in the Mississippi Workforce Investment and Training Fund Holding Account.

(c) Suspension of the Workforce Enhancement Training Fund contributions required pursuant to this chapter shall occur if the insured unemployment rate exceeds an average of five and five-tenths percent (5.5%) for the three (3) consecutive months immediately preceding the effective date of the new rate year following such occurrence and shall remain suspended throughout the duration of that rate year. Such suspension shall continue until such time as the three (3) consecutive months immediately preceding the effective date of the next rate year that has an insured unemployment rate of less than an average of four and five-tenths percent (4.5%). Upon such occurrence, reactivation shall be effective upon the first day of the rate year following the event that lifts suspension and shall be in effect for that year and shall continue until such time as a subsequent suspension event as described in this chapter occurs.

(d) Notwithstanding any other provision contained herein, contribution collections for the State Workforce Investment Fund, Mississippi Works Fund and Mississippi Workforce Enhancement Training Fund shall not be suspended, under any circumstances, for tax rate year 2021, and the

resulting contribution rate of twenty one-hundredths percent (.20%) shall be added to the employer's general and individual experience rate to obtain the total unemployment insurance rate for 2021.

(4) All collections due or accrued prior to any suspension of the Mississippi Workforce Enhancement Training Fund will be collected based upon the law at the time the contributions accrued, regardless of when they are actually collected.

HISTORY: Codes, 1942, § 7391; Laws, 1940, ch. 295, § 5; Laws, 1948, ch. 412, § 4b; Laws, 1950, ch. 454, § 1b; Laws, 1952, ch. 383, § 2b; Laws, 1956, ch. 404, § 2b; Laws, 1958, ch. 533, § 5b; Laws, 1962, ch. 564, § 2b; Laws, 1964, ch. 442, § 2b; Laws, 1971, ch. 519, § 7; Laws, 1979, ch. 465, § 1; Laws, 1984, ch. 301, § 1; Laws, 1998, ch. 331, § 3; Laws, 1998, ch. 491, § 2; Laws, 2005, ch. 437, § 1; Laws, 2010, ch. 302, § 1; Laws, 2010, ch. 504, § 2; Laws, 2013, ch. 309, § 6; Laws, 2014, ch. 504, § 1; Laws, 2016, ch. 302, § 1, eff from and after passage (approved Mar. 21, 2016); Laws, 2020, ch. 445, § 2, eff from and after July 1, 2020; Laws, 2020, ch. 476, § 5, eff from and after July 1, 2020.

Joint Legislative Committee Note — Section 2 of Chapter 445, Laws of 2020, effective from and after July 1, 2020 (became law without the Governor's signature on July 7, 2020), amended this section. Section 5 of Chapter 476, Laws of 2020, effective from and after July 1, 2020 (approved July 8, 2020), also amended this section. As set out above, this section reflects the language of both amendments, pursuant to Section 1-1-109, which gives the Joint Legislative Committee on Compilation, Revision, and Publication of Legislation authority to integrate amendments so that all versions of the same code section amended within the same legislative session may become effective. The Joint Committee on Compilation, Revision, and Publication of Legislation ratified the integration of these amendments as consistent with the legislative intent at the October 19, 2020, meeting of the Committee.

Amendment Notes — The 2013 amendment inserted the "(a)" designation in (1) and added (1)(b); inserted the (4)(a)(i) and (iii) designators; added the exception in (4)(a)(i); added (4)(a)(ii); and substituted "Mississippi Community College Board" for "State Board for Community and Junior Colleges" throughout the section.

The 2014 amendment rewrote the section to provide for a reduction in the newly subject employer rate for unemployment compensation insurance and to provide for the distributions of Mississippi Workforce Enhancement Training Contributions.

The 2016 amendment rewrote the section to establish the Mississippi Works Fund, to designate the agencies that are responsible for paying the cost of collecting certain workforce contributions, to provide for the collection and deposit of the contributions, to provide for the disbursement of funds deposited into the Mississippi Works Fund, and to establish the rates at which contributions are collected.

The first 2020 amendment (ch. 445) substituted "subparagraph (ii)2 of this paragraph" for "subparagraph (ii)(2) of this paragraph" in the last paragraph of (2)(a) and in (2)(c); and added (3)(d).

The second 2020 amendment (ch. 476), in the last paragraph of (2)(a), substituted "subparagraph (ii)2. of this paragraph" for "subparagraph (ii)(2) of this paragraph"; in (2)(c), inserted "with oversight provided by the Mississippi Office of Workforce Development," and substituted "paragraph (a)(ii)2. of this subsection" for "paragraph (a)(ii)(2) of this subsection"; in (2)(e), rewrote (i), inserted "the Office of Workforce Development in (ii), in (iii), in the first sentence, substituted "Office of Workforce Development" for State Workforce Investment Board Rules Committee" and "Mississippi Development Authority," in the third sentence, inserted "of the Office of Workforce Development," in the sixth sentence, inserted "Office of Workforce Development in collaboration with the Mississippi," and substituted "entity" for "entities," and in the

next-to-last sentence, substituted "Mississippi Office of Workforce Development" for "Mississippi Department of Employment Security," in (iv)1, added "subject to the administrative oversight of the Office of Workforce Development," in (iv)2, substituted "Office of Workforce Development, in coordination with the Mississippi Department of Employment Security as fiscal agent" for "department," "Office of Workforce Development" for "State Workforce Investment Board" twice, and "office" for "board," in (iv)3, substituted "office" for "board," and in (v), substituted "Office of Workforce Development" for "department" the first time it appears and for "State Workforce Investment Board" the second time it appears.

§ 71-5-355. Modified rates.

(1) As used in this section, the following words and phrases shall have the following meanings, unless the context clearly requires otherwise:

(a) "Tax year" means any period beginning on January 1 and ending on December 31 of a year.

(b) "Computation date" means June 30 of any calendar year immediately preceding the tax year during which the particular contribution rates are effective.

(c) "Effective date" means January 1 of the tax year.

(d) Except as hereinafter provided, "payroll" means the total of all wages paid for employment by an employer as defined in Section 71-5-11, subsection H, plus the total of all remuneration paid by such employer excluded from the definition of wages by Section 71-5-351. For the computation of modified rates, "payroll" means the total of all wages paid for employment by an employer as defined in Section 71-5-11, subsection H.

(e) For the computation of modified rates, "eligible employer" means an employer whose experience-rating record has been chargeable with benefits throughout the thirty-six (36) consecutive calendar-month period ending on the computation date, except that any employer who has not been subject to the Mississippi Employment Security Law for a period of time sufficient to meet the thirty-six (36) consecutive calendar-month requirement shall be an eligible employer if his experience-rating record has been chargeable throughout not less than the twelve (12) consecutive calendar-month period ending on the computation date. No employer shall be considered eligible for a contribution rate less than five and four-tenths percent (5.4%) with respect to any tax year, who has failed to file any two (2) quarterly reports within the qualifying period by September 30 following the computation date. No employer or employing unit shall be eligible for a contribution rate of less than five and four-tenths percent (5.4%) for the tax year in which the employing unit is found by the department to be in violation of Section 71-5-19(2) or (3) and for the next two (2) succeeding tax years. No representative of such employing unit who was a party to a violation as described in Section 71-5-19(2) or (3), if such representative was or is an employing unit in this state, shall be eligible for a contribution rate of less than five and four-tenths percent (5.4%) for the tax year in which such violation was detected by the department and for the next two (2) succeeding tax years.

(f) With respect to any tax year, "reserve ratio" means the ratio which the total amount available for the payment of benefits in the Unemployment

Compensation Fund, excluding any amount which has been credited to the account of this state under Section 903 of the Social Security Act, as amended, and which has been appropriated for the expenses of administration pursuant to Section 71-5-457 whether or not withdrawn from such account, on October 31 (close of business) of each calendar year bears to the aggregate of the taxable payrolls of all employers for the twelve (12) calendar months ending on June 30 next preceding.

(g) "Modified rates" means the rates of employer unemployment insurance contributions determined under the provisions of this chapter and the rates of newly subject employers, as provided in Section 71-5-353.

(h) For the computation of modified rates, "qualifying period" means a period of not less than the thirty-six (36) consecutive calendar months ending on the computation date throughout which an employer's experience-rating record has been chargeable with benefits; except that with respect to any eligible employer who has not been subject to this article for a period of time sufficient to meet the thirty-six (36) consecutive calendar-month requirement, "qualifying period" means the period ending on the computation date throughout which his experience-rating record has been chargeable with benefits, but in no event less than the twelve (12) consecutive calendar-month period ending on the computation date throughout which his experience-rating record has been so chargeable.

(i) The "exposure criterion" (EC) is defined as the cash balance of the Unemployment Compensation Fund which is available for the payment of benefits as of November 16 of each calendar year or the next working day if November 16 falls on a holiday or a weekend, divided by the total wages, exclusive of wages paid by all state agencies, all political subdivisions, reimbursable nonprofit corporations, and tax-exempt public service employment, for the twelve-month period ending June 30 immediately preceding such date. The EC shall be computed to four (4) decimal places and rounded up if any fraction remains.

(j) The "cost rate criterion" (CRC) is defined as follows: Beginning with January 1974, the benefits paid for the twelve-month period ending December 1974 are summed and divided by the total wages for the twelve-month period ending on June 30, 1975. Similar ratios are computed by subtracting the earliest month's benefit payments and adding the benefits of the next month in the sequence and dividing each sum of twelve (12) months' benefits by the total wages for the twelve-month period ending on the June 30 which is nearest to the final month of the period used to compute the numerator. If December is the final month of the period used to compute the numerator, then the twelve-month period ending the following June 30 will be used for the denominator. Benefits and total wages used in the computation of the cost rate criterion shall exclude all benefits and total wages applicable to state agencies, political subdivisions, reimbursable nonprofit corporations, and tax-exempt PSE employment.

The CRC shall be computed as the average for the highest monthly value of the cost rate criterion computations during each of the economic

cycles since the calendar year 1974 as defined by the National Bureau of Economic Research. The CRC shall be computed to four (4) decimal places and any remainder shall be rounded up.

The CRC shall be adjusted only through annual computations and additions of future economic cycles.

(k) "Size of fund index" (SOFI) is defined as the ratio of the exposure criterion (EC) to the cost rate criterion (CRC). The target size of fund index will be fixed at 1.0. If the insured unemployment rate (IUR) exceeds a four and five-tenths percent (4.5%) average for the most recent completed July to June period, the target SOFI will be .8 and will remain at that level until the computed SOFI (the average exposure criterion of the current year and the preceding year divided by the average cost rate criterion) equals 1.0 or the average IUR falls to four and five-tenths percent (4.5%) or less for any period July to June. However, if the IUR falls below two and five-tenths percent (2.5%) for any period July to June the target SOFI shall be 1.2 until such time as the computed SOFI is equal to or greater than 1.0 or the IUR is equal to or greater than two and five-tenths percent (2.5%), at which point the target SOFI shall return to 1.0.

(*l*) No employer's unemployment contribution general experience rate plus individual unemployment experience rate shall exceed five and four-tenths percent (5.4%). Accrual rules shall apply for purposes of computing contribution rates including associated functions.

(m) The term "general experience rate" has the same meaning as the minimum tax rate.

(2) Modified rates:

(a) For any tax year, when the reserve ratio on the preceding November 16, in the case of any tax year, equals or exceeds three percent (3%), the modified rates, as hereinafter prescribed, shall be in effect. In computation of this reserve ratio, any remainder shall be rounded down.

(b) Modified rates shall be determined for the tax year for each eligible employer on the basis of his experience-rating record in the following manner:

(i) The department shall maintain an experience-rating record for each employer. Nothing in this chapter shall be construed to grant any employer or individuals performing services for him any prior claim or rights to the amounts paid by the employer into the fund.

(ii) Benefits paid to an eligible individual shall be charged against the experience-rating record of his base period employers in the proportion to which the wages paid by each base period employer bears to the total wages paid to the individual by all the base period employers, provided that benefits shall not be charged to an employer's experience-rating record if the department finds that the individual:

1. Voluntarily left the employ of such employer without good cause attributable to the employer or to accept other work;

2. Was discharged by such employer for misconduct connected with his work;

3. Refused an offer of suitable work by such employer without good cause, and the department further finds that such benefits are based on wages for employment for such employer prior to such voluntary leaving, discharge or refusal of suitable work, as the case may be;

4. Had base period wages which included wages for previously uncovered services as defined in Section 71-5-511(e) to the extent that the Unemployment Compensation Fund is reimbursed for such benefits pursuant to Section 121 of Public Law 94-566;

5. Extended benefits paid under the provisions of Section 71-5-541 which are not reimbursable from federal funds shall be charged to the experience-rating record of base period employers;

6. Is still working for such employer on a regular part-time basis under the same employment conditions as hired. Provided, however, that benefits shall be charged against an employer if an eligible individual is paid benefits who is still working for such employer on a part-time "as-needed" basis;

7. Was hired to replace a United States serviceman or servicewoman called into active duty and was laid off upon the return to work by that serviceman or servicewoman, unless such employer is a state agency or other political subdivision or instrumentality of the state;

8. Was paid benefits during any week while in training with the approval of the department, under the provisions of Section 71-5-513B, or for any week while in training approved under Section 236(a)(1) of the Trade Act of 1974, under the provisions of Section 71-5-513C;

9. Is not required to serve the one-week waiting period as described in Section 71-5-505(2). In that event, only the benefits paid in lieu of the waiting period week may be noncharged; or

10. Was paid benefits as a result of a fraudulent claim, provided notification was made to the Mississippi Department of Employment Security in writing or by email by the employer, within ten (10) days of the mailing of the notice of claim filed to the employer's last-known address.

(iii) Notwithstanding any other provision contained herein, an employer shall not be noncharged when the department finds that the employer or the employer's agent of record was at fault for failing to respond timely or adequately to the request of the department for information relating to an unemployment claim that was subsequently determined to be improperly paid, unless the employer or the employer's agent of record shows good cause for having failed to respond timely or adequately to the request of the department for information. For purposes of this subparagraph "good cause" means an event that prevents the employer or employer's agent of record from timely responding, and includes a natural disaster, emergency or similar event, or an illness on the part of the employer, the employer's agent of record, or their staff charged with responding to such inquiries when there is no other individual who has the knowledge or ability to respond. Any agency error that

resulted in a delay in, or the failure to deliver notice to, the employer or the employer's agent of record shall also be considered good cause for purposes of this subparagraph.

(iv) The department shall compute a benefit ratio for each eligible employer, which shall be the quotient obtained by dividing the total benefits charged to his experience-rating record during the period his experience-rating record has been chargeable, but not less than the twelve (12) consecutive calendar-month period nor more than the thirty-six (36) consecutive calendar-month period ending on the computation date, by his total taxable payroll for the same period on which all unemployment insurance contributions due have been paid on or before the September 30 immediately following the computation date. Such benefit ratio shall be computed to the tenth of a percent (.1%), rounding any remainder to the next higher tenth.

(v)1. The unemployment insurance contribution rate for each eligible employer shall be the sum of two (2) rates: his individual experience rate in the range from zero percent (0%) to five and four-tenths percent (5.4%), plus a general experience rate. In no event shall the resulting unemployment insurance rate be in excess of five and four-tenths percent (5.4%), however, it is the intent of this section to provide the ability for employers to have a tax rate, the general experience rate plus the individual experience rate, of up to five and four-tenths percent (5.4%).

2. The employer's individual experience rate shall be equal to his benefit ratio as computed under subsection (2)(b)(iv) above.

3. The general experience rate shall be determined in the following manner: The department shall determine annually, for the thirty-six (36) consecutive calendar-month period ending on the computation date, the amount of benefits which were not charged to the record of any employer and of benefits which were ineffectively charged to the employer's experience-rating record. For the purposes of this item 3, the term "ineffectively charged benefits" shall include:

a. The total of the amounts of benefits charged to the experience-rating records of all eligible employers which caused their benefit ratios to exceed five and four-tenths percent (5.4%);

b. The total of the amounts of benefits charged to the experience-rating records of all ineligible employers which would cause their benefit ratios to exceed five and four-tenths percent (5.4%) if they were eligible employers; and

c. The total of the amounts of benefits charged or chargeable to the experience-rating record of any employer who has discontinued his business or whose coverage has been terminated within such period; provided, that solely for the purposes of determining the amounts of ineffectively charged benefits as herein defined, a "benefit ratio" shall be computed for each ineligible employer, which shall be the quotient obtained by dividing the total benefits charged to his

experience-rating record throughout the period ending on the computation date, during which his experience-rating record has been chargeable with benefits, by his total taxable payroll for the same period on which all unemployment insurance contributions due have been paid on or before the September 30 immediately following the computation date; and provided further, that such benefit ratio shall be computed to the tenth of one percent (.1%) and any remainder shall be rounded to the next higher tenth.

The ratio of the sum of these amounts (subsection (2)(b)(v)3a, b and c) to the taxable wages paid during the same period divided by all eligible employers whose benefit ratio did not exceed five and four-tenths percent (5.4%), computed to the next higher tenth of one percent (.1%), shall be the general experience rate; however, the general experience rate for rate year 2014 shall be two tenths of one percent (.2%) and to that will be added the employer's individual experience rate for the total unemployment insurance rate.

4.a. Except as otherwise provided in this item 4, the general experience rate shall be adjusted by use of the size of fund index factor. This factor may be positive or negative, and shall be determined as follows: From the target SOFI, as defined in subsection (1)(k) of this section, subtract the simple average of the current and preceding years' exposure criterions divided by the cost rate criterion, as defined in subsection (1)(j) of this section. The result is then multiplied by the product of the CRC, as defined in subsection (1)(j) of this section, and total wages for the twelve-month period ending June 30 divided by the taxable wages for the twelve-month period ending June 30. This is the percentage positive or negative added to the general experience rate. The sum of the general experience rate and the trust fund adjustment factor shall be multiplied by fifty percent (50%) and this product shall be computed to one (1) decimal place, and rounded to the next higher tenth.

b. Notwithstanding the minimum rate provisions as set forth in subsection (1)(l) of this section, the general experience rate of all employers shall be reduced by seven one-hundredths of one percent (.07%) for calendar year 2013 only.

5. The general experience rate shall be zero percent (0%) unless the general experience ratio for any tax year as computed and adjusted on the basis of the trust fund adjustment factor and reduced by fifty percent (50%) is an amount equal to or greater than two-tenths of one percent (.2%), then the general experience rate shall be the computed general experience ratio and adjusted on the basis of the trust fund adjustment factor and reduced by fifty percent (50%); however, in no case shall the sum of the general experience plus the individual experience unemployment insurance rate exceed five and four-tenths percent (5.4%). For rate years subsequent to 2014, Mississippi Workforce Enhancement Training contribution rate, and/or State Workforce Investment contribution

rate, and/or Mississippi Works contribution rate, when in effect, shall be added to the unemployment contribution rate, regardless of whether the addition of this contribution rate causes the total contribution rate for the employer to exceed five and four-tenths percent (5.4%).

6. The department shall include in its annual rate notice to employers a brief explanation of the elements of the general experience rate, and shall include in its regular publications an annual analysis of benefits not charged to the record of any employer, and of the benefit experience of employers by industry group whose benefit ratio exceeds four percent (4%), and of any other factors which may affect the size of the general experience rate.

7. Notwithstanding any other provision contained herein, the general experience rate for calendar year 2021 shall be zero percent (0%). Charges attributed to each employer's individual experience rate for the period March 8, 2020, through June 30, 2020, will not impact the employer's individual experience rate calculations for purposes of calculating the total unemployment insurance rate for 2021 and the two (2) subsequent tax rate years. Moreover, charges attributed to each employer's individual experience rate for the period July 1, 2020, through December 31, 2020, will not impact the employer's individual experience rate calculations for purposes of calculating the total unemployment insurance rate for 2022 and the two (2) subsequent tax rate years.

(vi) When any employing unit in any manner succeeds to or acquires the organization, trade, business or substantially all the assets thereof of an employer, excepting any assets retained by such employer incident to the liquidation of his obligations, whether or not such acquiring employing unit was an employer within the meaning of Section 71-5-11, subsection H, prior to such acquisition, and continues such organization, trade or business, the experience-rating and payroll records of the predecessor employer shall be transferred as of the date of acquisition to the successor employer for the purpose of rate determination.

(vii) When any employing unit succeeds to or acquires a distinct and severable portion of an organization, trade or business, the experience-rating and payroll records of such portion, if separately identifiable, shall be transferred to the successor upon:

1. The mutual consent of the predecessor and the successor;

2. Approval of the department;

3. Continued operation of the transferred portion by the successor after transfer; and

4. The execution and the filing with the department by the predecessor employer of a waiver relinquishing all rights to have the experience-rating and payroll records of the transferred portion used for the purpose of determining modified rates of contribution for such predecessor.

(viii) If the successor was an employer subject to this chapter prior to the date of acquisition, it shall continue to pay unemployment insurance

contributions at the rate applicable to it from the date the acquisition occurred until the end of the then current tax year. If the successor was not an employer prior to the date of acquisition, it shall pay unemployment insurance contributions at the rate applicable to the predecessor or, if more than one (1) predecessor and the same rate is applicable to both, the rate applicable to the predecessor or predecessors, from the date the acquisition occurred until the end of the then current tax year. If the successor was not an employer prior to the date the acquisition occurred and simultaneously acquires the businesses of two (2) or more employers to whom different rates of unemployment insurance contributions are applicable, it shall pay unemployment insurance contributions from the date of the acquisition until the end of the current tax year at a rate computed on the basis of the combined experience-rating and payroll records of the predecessors as of the computation date for such tax year. In all cases the rate of unemployment insurance contributions applicable to such successor for each succeeding tax year shall be computed on the basis of the combined experience-rating and payroll records of the successor and the predecessor or predecessors.

(ix) The department shall notify each employer quarterly of the benefits paid and charged to his experience-rating record; and such notification, in the absence of an application for redetermination filed within thirty (30) days after the date of such notice, shall be final, conclusive and binding upon the employer for all purposes. A redetermination, made after notice and opportunity for a fair hearing, by a hearing officer designated by the department who shall consider and decide these and related applications and protests; and the finding of fact in connection therewith may be introduced into any subsequent administrative or judicial proceedings involving the determination of the rate of unemployment insurance contributions of any employer for any tax year, and shall be entitled to the same finality as is provided in this subsection with respect to the findings of fact in proceedings to redetermine the contribution rate of an employer.

(x) The department shall notify each employer of his rate of contribution as determined for any tax year as soon as reasonably possible after September 1 of the preceding year. Such determination shall be final, conclusive and binding upon such employer unless, within thirty (30) days after the date of such notice to his last-known address, the employer files with the department an application for review and redetermination of his contribution rate, setting forth his reasons therefor. If the department grants such review, the employer shall be promptly notified thereof and shall be afforded an opportunity for a fair hearing by a hearing officer designated by the department who shall consider and decide these and related applications and protests; but no employer shall be allowed, in any proceeding involving his rate of unemployment insurance contributions or contribution liability, to contest the chargeability to his account of any benefits paid in accordance with a determination, redetermination or

decision pursuant to Sections 71-5-515 through 71-5-533 except upon the ground that the services on the basis of which such benefits were found to be chargeable did not constitute services performed in employment for him, and then only in the event that he was not a party to such determination, redetermination, decision or to any other proceedings provided in this chapter in which the character of such services was determined. The employer shall be promptly notified of the denial of this application or of the redetermination, both of which shall become final unless, within ten (10) days after the date of notice thereof, there shall be an appeal to the department itself. Any such appeal shall be on the record before said designated hearing officer, and the decision of said department shall become final unless, within thirty (30) days after the date of notice thereof to the employer's last-known address, there shall be an appeal to the Circuit Court of the First Judicial District of Hinds County, Mississippi, in accordance with the provisions of law with respect to review of civil causes by certiorari.

(3) Notwithstanding any other provision of law, the following shall apply regarding assignment of rates and transfers of experience:

(a)(i) If an employer transfers its trade or business, or a portion thereof, to another employer and, at the time of the transfer, there is substantially common ownership, management or control of the two (2) employers, then the unemployment experience attributable to the transferred trade or business shall be transferred to the employer to whom such business is so transferred. The rates of both employers shall be recalculated and made effective on January 1 of the year following the year the transfer occurred.

(ii) If, following a transfer of experience under subparagraph (i) of this paragraph (a), the department determines that a substantial purpose of the transfer of trade or business was to obtain a reduced liability of unemployment insurance contributions, then the experience-rating accounts of the employers involved shall be combined into a single account and a single rate assigned to such account.

(b) Whenever a person who is not an employer or an employing unit under this chapter at the time it acquires the trade or business of an employer, the unemployment experience of the acquired business shall not be transferred to such person if the department finds that such person acquired the business solely or primarily for the purpose of obtaining a lower rate of unemployment insurance contributions. Instead, such person shall be assigned the new employer rate under Section 71-5-353. In determining whether the business was acquired solely or primarily for the purpose of obtaining a lower rate of unemployment insurance contributions, the department shall use objective factors which may include the cost of acquiring the business, whether the person continued the business enterprise of the acquired business, how long such business enterprise was continued, or whether a substantial number of new employees were hired for performance of duties unrelated to the business activity conducted prior to acquisition.

(c)(i) If a person knowingly violates or attempts to violate paragraph (a) or (b) of this subsection or any other provision of this chapter related to

determining the assignment of a contribution rate, or if a person knowingly advises another person in a way that results in a violation of such provision, the person shall be subject to the following penalties:

1. If the person is an employer, then such employer shall be assigned the highest rate assignable under this chapter for the rate year during which such violation or attempted violation occurred and the three (3) rate years immediately following this rate year. However, if the person's business is already at such highest rate for any year, or if the amount of increase in the person's rate would be less than two percent (2%) for such year, then a penalty rate of unemployment insurance contributions of two percent (2%) of taxable wages shall be imposed for such year. The penalty rate will apply to the successor business as well as the related entity from which the employees were transferred in an effort to obtain a lower rate of unemployment insurance contributions.

2. If the person is not an employer, such person shall be subject to a civil money penalty of not more than Five Thousand Dollars ($5,000.00). Each such transaction for which advice was given and each occurrence or reoccurrence after notification being given by the department shall be a separate offense and punishable by a separate penalty. Any such fine shall be deposited in the penalty and interest account established under Section 71-5-114.

(ii) For purposes of this paragraph (c), the term "knowingly" means having actual knowledge of or acting with deliberate ignorance or reckless disregard for the prohibition involved.

(iii) For purposes of this paragraph (c), the term "violates or attempts to violate" includes, but is not limited to, intent to evade, misrepresentation or willful nondisclosure.

(iv) In addition to the penalty imposed by subparagraph (i) of this paragraph (c), any violation of this subsection may be punishable by a fine of not more than Ten Thousand Dollars ($10,000.00) or by imprisonment for not more than five (5) years, or by both such fine and imprisonment. This subsection shall prohibit prosecution under any other criminal statute of this state.

(d) The department shall establish procedures to identify the transfer or acquisition of a business for purposes of this subsection.

(e) For purposes of this subsection:

(i) "Person" has the meaning given such term by Section 7701(a)(1) of the Internal Revenue Code of 1986; and

(ii) "Employing unit" has the meaning as set forth in Section 71-5-11.

(f) This subsection shall be interpreted and applied in such a manner as to meet the minimum requirements contained in any guidance or regulations issued by the United States Department of Labor.

HISTORY: Codes, 1942, § 7392; Laws, 1940, ch. 295, § 5; Laws, 1948, ch. 412, § 4c; Laws, 1950, ch. 454, § 1c; Laws, 1952, ch. 383, § 2c; Laws, 1956, ch. 404, § 2c; Laws, 1958, ch. 533, § 5c; Laws, 1962, ch. 564, § 2c; Laws, 1964, ch. 442, § 2c; Laws, 1971, ch. 519, § 8; Laws, 1977, ch. 497, § 3; Laws, 1979, ch. 465, § 2;

Laws, 1980, ch. 350; Laws, 1981, ch. 447, § 1; Laws, 1982, ch. 349, § 1; Laws, 1984, ch. 301, § 2; Laws, 1985, ch. 442; Laws, 1986, ch. 319, § 1; Laws, 1987, ch. 394; Laws, 1988, ch. 322, § 1; Laws, 1991, ch. 511, § 1; Laws, 1992, ch. 463, § 1; Laws, 1993, ch. 307, § 1; Laws, 1994, ch. 303, § 2; reenacted, Laws, 1995, ch. 507, § 2; Laws, 1998, ch. 331, § 4; Laws, 1999, ch. 306, § 2; Laws, 2000, ch. 412, § 2; Laws, 2005, ch. 400, § 1; Laws, 2005, ch. 437, § 2; Laws, 2007, ch. 606, § 8; Laws, 2010, ch. 302, § 2; Laws, 2010, ch. 504, § 3; Laws, 2012, ch. 515, § 60; Laws, 2013, ch. 309, § 7; Laws, 2014, ch. 350, § 1; Laws, 2014, ch. 504, § 2; Laws, 2016, ch. 302, § 2, eff from and after passage (approved Mar. 21, 2016); Laws, 2020, ch. 445, § 1, eff from and after July 1, 2020.

Joint Legislative Committee Note — Section 2 of Chapter 504, Laws of 2014, effective from and after passage (approved April 21, 2014), amended this section. Section 1 of Chapter 350, Laws of 2014, effective from and after July 1, 2014 (approved March 17, 2014), also amended this section. As set out above, this section reflects the language of both amendments pursuant to Section 1-1-109 which gives the Joint Legislative Committee on Compilation, Revision, and Publication of Legislation authority to integrate amendments so that all versions of the same code section enacted within the same legislative session may become effective. The Joint Committee on Compilation, Revision, and Publication of Legislation ratified the integration of these amendments as consistent with the legislative intent at the July 24, 2014, meeting of the Committee.

Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected an error in an internal statutory reference in (2)(b)(v)4.b by substituting "subsection (1)(*l*) of this section" for "subsection (1)(*l*) of this subsection." The Joint Committee ratified the correction at its July 24, 2014, meeting.

Editor's Notes — Laws of 2012, ch. 515, § 61, provides:

"SECTION 61. Section 60 of this act shall take effect and be in force from and after its passage, and the remainder of this act shall take effect and be in force from and after July 1, 2012."

Amendment Notes — The 2012 amendment added the last sentence of (1)(*l*); and in (2)(a), substituted "November 16" for "November 1" and "three percent (3%)" for "four percent (4%)."

The 2013 amendment added (2)(b)(iii) and redesignated remaining subdivisions and subdivision references accordingly; added the exception in (2)(b)(v)4.a; added (2)(b)(v)4.b; and updated references to subsections in Section 71-5-11 throughout.

The first 2014 amendment (ch. 350), in (1)(d), substituted "H" for "I" at the end of the last sentence and in (2)(b)(ii)1. added "or to accept other work" to the end.

The second 2014 (ch. 504) amendment inserted "unemployment insurance" throughout the section; in (1)(k), deleted "For years following December 31, 2009" preceding "the target size of fund index" from the beginning of the second sentence; in (1)(*l*), first sentence, inserted "unemployment" following "No employer's", substituted "two-tenths of one percent (.2%)" for "four-tenths of one percent (.4%)", deleted the second and third sentences, and deleted "From and after January 1, 2012" preceding "accrual rules shall apply" from the beginning of the last sentence; in (2)(b)(iv), deleted the first undesignated paragraph and the table; in (2)(b)(v)3.c., added "however, the general . . . insurance rate" to the end; in (2)(b)(v)4.b, substituted "section" for "Section 71-5-355", inserted "of this section" following "(1)(*l*)", deleted "if Chapter 309, Laws of 2013, becomes effective before March 8, 2013" preceding "the general experience rate of all", and deleted the last sentence; in (2)(b)(v)5., inserted "the general experience rate for the year shall be two-tenths of one percent (.2%)." following "it shall be disregarded and," added "and in all . . . five and four-tenths percent (5.4%)" to the end of the subsection; and made stylistic changes throughout.

The 2016 amendment, in (1)(l), inserted "general experience" and "plus individual

unemployment experience rate" in the first sentence, and deleted the second sentence, which read: "For any year the general experience rate computes as an amount less than two-tenths of one percent (.2%) the general experience rate shall be established at two-tenths of one percent (.2%)"; added (2)(b)(ii)10 and made related stylistic changes; and rewrote (2)(b)(v)5 to set the general experience rate at zero percent under certain circumstances.

The 2020 amendment added (2)(b)(v)7.

§ 71-5-357. Regulations governing nonprofit organizations [Repealed effective July 1, 2023].

Benefits paid to employees of nonprofit organizations shall be financed in accordance with the provisions of this section. For the purpose of this section, a nonprofit organization is an organization (or group of organizations) described in Section 501(c)(3) of the Internal Revenue Code of 1954 which is exempt from income tax under Section 501(a) of such code (26 USCS Section 501).

(a) Any nonprofit organization which, under Section 71-5-11, subsection H(3), is or becomes subject to this chapter shall pay contributions under the provisions of Sections 71-5-351 through 71-5-355 unless it elects, in accordance with this paragraph, to pay to the department for the unemployment fund an amount equal to the amount of regular benefits and one-half (1/2) of the extended benefits paid, that is attributable to service in the employ of such nonprofit organization, to individuals for weeks of unemployment which begin during the effective period of such election.

(i) Any nonprofit organization which becomes subject to this chapter may elect to become liable for payments in lieu of contributions for a period of not less than twelve (12) months, beginning with the date on which such subjectivity begins, by filing a written notice of its election with the department not later than thirty (30) days immediately following the date of the determination of such subjectivity.

(ii) Any nonprofit organization which makes an election in accordance with subparagraph (i) of this paragraph will continue to be liable for payments in lieu of contributions unless it files with the department a written termination notice not later than thirty (30) days prior to the beginning of the tax year for which such termination shall first be effective.

(iii) Any nonprofit organization which has been paying contributions under this chapter may change to a reimbursable basis by filing with the department, not later than thirty (30) days prior to the beginning of any tax year, a written notice of election to become liable for payments in lieu of contributions. Such election shall not be terminable by the organization for that and the next tax year.

(iv) The department may for good cause extend the period within which a notice of election or a notice of termination must be filed, and may permit an election to be retroactive.

(v) The department, in accordance with such regulations as it may prescribe, shall notify each nonprofit organization of any determination

which it may make of its status as an employer, of the effective date of any election which it makes and of any termination of such election. Such determinations shall be subject to reconsideration, appeal and review in accordance with the provisions of Sections 71-5-351 through 71-5-355.

(b) Payments in lieu of contributions shall be made in accordance with the provisions of subparagraph (i) of this paragraph.

(i) At the end of each calendar quarter, or at the end of any other period as determined by the department, the department shall bill each nonprofit organization (or group of such organizations) which has elected to make payments in lieu of contributions, for an amount equal to the full amount of regular benefits plus one-half (1/2) of the amount of extended benefits paid during such quarter or other prescribed period that is attributable to service in the employ of such organization.

(ii) Payment of any bill rendered under subparagraph (i) of this paragraph shall be made not later than forty-five (45) days after such bill was delivered to the nonprofit organization, unless there has been an application for review and redetermination in accordance with subparagraph (v) of this paragraph.

1. All of the enforcement procedures for the collection of delinquent contributions contained in Sections 71-5-363 through 71-5-383 shall be applicable in all respects for the collection of delinquent payments due by nonprofit organizations who have elected to become liable for payments in lieu of contributions.

2. If any nonprofit organization is delinquent in making payments in lieu of contributions, the department may terminate such organization's election to make payments in lieu of contributions as of the beginning of the next tax year, and such termination shall be effective for the balance of such tax year.

(iii) Payments made by any nonprofit organization under the provisions of this paragraph shall not be deducted or deductible, in whole or in part, from the remuneration of individuals in the employ of the organization.

(iv) Payments due by employers who elect to reimburse the fund in lieu of contributions as provided in this paragraph may not be noncharged under any condition. The reimbursement must be on a dollar-for-dollar basis (One Dollar ($1.00) reimbursement for each dollar paid in benefits) in every case, so that the trust fund shall be reimbursed in full, such reimbursement to include, but not be limited to, benefits or payments erroneously or incorrectly paid, or paid as a result of a determination of eligibility which is subsequently reversed, or paid as a result of claimant fraud. However, political subdivisions who are reimbursing employers may elect to pay to the fund an amount equal to five-tenths percent (.5%) through December 31, 2010, and shall pay twenty-five one-hundredths percent (.25%) thereafter of the taxable wages paid during the calendar year with respect to employment, and those employers who so elect shall be relieved of liability for reimbursement of benefits paid under the same

conditions that benefits are not charged to the experience-rating record of a contributing employer as provided in Section 71-5-355(2)(b)(ii) other than Clause 5 thereof. Benefits paid in such circumstances for which reimbursing employers are relieved of liability for reimbursement shall not be considered attributable to service in the employment of such reimbursing employer.

(v) The amount due specified in any bill from the department shall be conclusive on the organization unless, not later than fifteen (15) days after the bill was delivered to it, the organization files an application for redetermination by the department, setting forth the grounds for such application or appeal. The department shall promptly review and reconsider the amount due specified in the bill and shall thereafter issue a redetermination in any case in which such application for redetermination has been filed. Any such redetermination shall be conclusive on the organization unless, not later than fifteen (15) days after the redetermination was delivered to it, the organization files an appeal to the Circuit Court of the First Judicial District of Hinds County, Mississippi, in accordance with the provisions of law with respect to review of civil causes by certiorari.

(vi) Past-due payments of amounts in lieu of contributions shall be subject to the same interest and penalties that, pursuant to Section 71-5-363, apply to past-due contributions.

(c) Each employer that is liable for payments in lieu of contributions shall pay to the department for the fund the amount of regular benefits plus the amount of one-half (1/2) of extended benefits paid are attributable to service in the employ of such employer. If benefits paid to an individual are based on wages paid by more than one (1) employer and one or more of such employers are liable for payments in lieu of contributions, the amount payable to the fund by each employer that is liable for such payments shall be determined in accordance with the provisions of subparagraph (i) or subparagraph (ii) of this paragraph.

(i) If benefits paid to an individual are based on wages paid by one or more employers that are liable for payment in lieu of contributions and on wages paid by one or more employers who are liable for contributions, the amount of benefits payable by each employer that is liable for payments in lieu of contributions shall be an amount which bears the same ratio to the total benefits paid to the individual as the total base period wages paid to the individual by such employer bear to the total base period wages paid to the individual by all of his base period employers.

(ii) If benefits paid to an individual are based on wages paid by two (2) or more employers that are liable for payments in lieu of contributions, the amount of benefits payable by each such employer shall be an amount which bears the same ratio to the total benefits paid to the individual as the total base period wages paid to the individual by such employer bear to the total base period wages paid to the individual by all of his base period employers.

(d) In the discretion of the department, any nonprofit organization that elects to become liable for payments in lieu of contributions shall be required to execute and file with the department a surety bond approved by the department, or it may elect instead to deposit with the department money or securities. The amount of such bond or deposit shall be determined in accordance with the provisions of this paragraph.

(i) The amount of the bond or deposit required by paragraph (d) shall be equal to two and seven-tenths percent (2.7%) thereafter to December 31, 2010, and one and thirty-five one-hundredths percent (1.35%) thereafter, of the organization's taxable wages paid for employment as defined in Section 71-5-11, subsection I(4), for the four (4) calendar quarters immediately preceding the effective date of the election, the renewal date in the case of a bond, or the biennial anniversary of the effective date of election in the case of a deposit of money or securities, whichever date shall be most recent and applicable. If the nonprofit organization did not pay wages in each of such four (4) calendar quarters, the amount of the bond or deposit shall be as determined by the department.

(ii) Any bond deposited under paragraph (d) shall be in force for a period of not less than two (2) tax years and shall be renewed with the approval of the department at such times as the department may prescribe, but not less frequently than at intervals of two (2) years as long as the organization continues to be liable for payments in lieu of contributions. The department shall require adjustments to be made in a previously filed bond as it deems appropriate. If the bond is to be increased, the adjusted bond shall be filed by the organization within thirty (30) days of the date notice of the required adjustment was delivered to it. Failure by any organization covered by such bond to pay the full amount of payments in lieu of contributions when due, together with any applicable interest and penalties provided in paragraph (b)(v) of this section, shall render the surety liable on the bond to the extent of the bond, as though the surety was such organization.

(iii) Any deposit of money or securities in accordance with paragraph (d) shall be retained by the department in an escrow account until liability under the election is terminated, at which time it shall be returned to the organization, less any deductions as hereinafter provided. The department may deduct from the money deposited under paragraph (d) by a nonprofit organization, or sell the securities it has so deposited, to the extent necessary to satisfy any due and unpaid payments in lieu of contributions and any applicable interest and penalties provided for in paragraph (b)(v) of this section. The department shall require the organization, within thirty (30) days following any deduction from a money deposit or sale of deposited securities under the provisions hereof, to deposit sufficient additional money or securities to make whole the organization's deposit at the prior level. Any cash remaining from the sale of such securities shall be a part of the organization's escrow account. The department may, at any time, review the adequacy of the deposit made by any organization. If, as

a result of such review, it determines that an adjustment is necessary, it shall require the organization to make additional deposit within thirty (30) days of notice of its determination or shall return to it such portion of the deposit as it no longer considers necessary, whichever action is appropriate. Disposition of income from securities held in escrow shall be governed by the applicable provisions of the state law.

(iv) If any nonprofit organization fails to file a bond or make a deposit, or to file a bond in an increased amount, or to increase or make whole the amount of a previously made deposit as provided under this subparagraph, the department may terminate such organization's election to make payments in lieu of contributions, and such termination shall continue for not less than the four (4) consecutive calendar-quarter periods beginning with the quarter in which such termination becomes effective; however, the department may extend for good cause the applicable filing, deposit or adjustment period by not more than thirty (30) days.

(v) Group account shall be established according to regulations prescribed by the department.

(e) Any employer which elects to make payments in lieu of contributions into the Unemployment Compensation Fund as provided in this paragraph shall not be liable to make such payments with respect to the benefits paid to any individual whose base period wages include wages for previously uncovered services as defined in Section 71-5-511(e) to the extent that the Unemployment Compensation Fund is reimbursed for such benefits pursuant to Section 121 of Public Law 94-566.

HISTORY: Codes, 1942, § 7392.3; Laws, 1971, ch. 519, § 16; Laws, 1977, ch. 497, § 4; Laws, 1978, ch. 339, § 1; Laws, 1982, ch. 480, § 1; Laws, 1983, ch. 361; Laws, 1998, ch. 331, § 5; Laws, 2002, ch. 562, § 2; Laws, 2004, ch. 572, § 34; Laws, 2007, ch. 606, § 9; reenacted without change, Laws, 2008, 1st Ex Sess, ch. 30, § 34; Laws, 2010, ch. 504, § 4; reenacted without change, Laws, 2010, ch. 559, § 33; reenacted without change, Laws, 2011, ch. 471, § 34; reenacted and amended, Laws, 2012, ch. 515, § 34; Laws, 2013, ch. 309, § 15, eff from and after passage (approved March 6, 2013); reenacted without change, Laws, 2019, ch. 451, § 34, eff from and after April 3, 2019.

Editor's Notes — Laws of 2004, ch. 572, § 60, as amended by Laws of 2008, 1st Ex Sess, ch. 30, § 58, as amended by Laws of 2010, ch. 559, § 58, as amended by Laws of 2011, ch. 471, § 59, as amended by Laws of 2012, ch. 515, § 58, as amended by Laws of 2019, ch. 451, § 58, and as amended by Laws of 2020, ch. 476, § 7, provides:

"SECTION 60. Sections 8 through 59 of this act shall stand repealed on July 1, 2023."

Amendment Notes — The 2012 amendment reenacted and amended the section by making minor stylistic changes.

The 2013 amendment substituted "subsection H" for "subsection I" in (a); and substituted "subsection I(4)" for "subsection J(4)" in (d)(i).

The 2019 amendment, effective April 3, 2019, reenacted the section without change.

§ 71-5-359. Regulations governing state boards, instrumentalities, and political subdivisions [Repealed effective July 1, 2023].

HISTORY: Codes, 1942, § 7392.5; Laws, 1971, ch. 519, § 17; Laws, 1977, ch. 497, § 5; Laws, 1978, ch. 340, § 1; Laws, 1984, ch. 488, § 274; Laws, 1986, ch. 320; Laws, 1993, ch. 353, § 1; Laws, 1993, ch. 397, § 1; Laws, 1995, ch. 507, § 3; Laws, 2004, ch. 572, § 35; Laws, 2007, ch. 556, § 1; Laws, 2007, ch. 606, § 10; reenacted without change, Laws, 2008, 1st Ex Sess, ch. 30, § 35; Laws, 2010, ch. 504, § 5; reenacted without change, Laws, 2010, ch. 559, § 34; reenacted and amended, Laws, 2011, ch. 471, § 35; reenacted without change, Laws, 2012, ch. 515, § 35, eff from and after July 1, 2012; reenacted without change, Laws, 2019, ch. 451, § 35, eff from and after April 3, 2019.

Editor's Notes — Laws of 2004, ch. 572, § 60, as amended by Laws of 2008, 1st Ex Sess, ch. 30, § 58, as amended by Laws of 2010, ch. 559, § 58, as amended by Laws of 2011, ch. 471, § 59, as amended by Laws of 2012, ch. 515, § 58, as amended by Laws of 2019, ch. 451, § 58, and as amended by Laws of 2020, ch. 476, § 7, provides:

"SECTION 60. Sections 8 through 59 of this act shall stand repealed on July 1, 2023."

This section was reenacted without change by Laws of 2019, ch. 451, § 35, effective from and after April 3, 2019. Since the language of the section as it appears in the main volume is unaffected by the reenactment, it is not reprinted in this supplement.

Amendment Notes — The 2012 amendment reenacted the section without change.

The 2019 amendment, effective April 3, 2019, reenacted the section without change.

§ 71-5-361. Period, election, and termination.

(1) Except as provided in subsection (3) of this section, any employing unit which is or becomes an employer subject to this chapter within any calendar year shall be deemed to be an employer during the whole of such calendar year.

(2) Except as otherwise provided in subsection (3) of this section:

(a) An employing unit (other than a state hospital, state institution of higher learning, state or state agency or other political subdivision or instrumentality) except as provided in subsections (b) and (c) of this subsection, shall cease to be an employer subject to this chapter only as of the first day of January of any calendar year, only if it files with the department on or before the thirty-first day of May of such year a written application for termination of coverage, and the department finds that during the preceding calendar year the employing unit did not pay wages of One Thousand Five Hundred Dollars ($1,500.00) or more in any calendar quarter and that there were no twenty (20) days, each day being in a different week within the preceding calendar year, within which such employing unit employed one or more individuals in employment subject to this chapter, or four (4) or more in the case of nonprofit organizations, except if the department finds that throughout a calendar year an employer has had no employment, it shall cease to be an employer subject to this chapter.

(b) An agricultural employer as defined under Section 71-5-11, subsection H(4)(a) shall cease to be an agricultural employer subject to this chapter only as of the first day of January of any calendar year, only if it files with the department on or before the thirty-first day of May of such year a written

application for termination of coverage, and the department finds that during the preceding calendar year the employing unit did not pay for agricultural employment wages as defined in Section 71-5-11, subsection I(6) of Twenty Thousand Dollars ($20,000.00) in any calendar quarter of the preceding calendar year and that there were no twenty (20) days, each day being in a different week, within such calendar year, within which such employing unit employed ten (10) or more individuals in employment subject to this chapter, except if the department finds that throughout a calendar year an employer has had no employment, it shall cease to be an employer subject to this chapter.

(c) A domestic employer, as defined in Section 71-5-11, subsection H(4)(b), shall cease to be an employer subject to this chapter only as of the first day of January of any calendar year, only if it files with the department on or before the thirty-first day of May of such year a written application for termination of coverage, and the department finds that during the preceding calendar year the employing unit did not pay wages for domestic employment of One Thousand Dollars ($1,000.00) or more in any calendar quarter of the preceding calendar year, except if the department finds that throughout a calendar year an employer has had no employment, it shall cease to be an employer subject to this chapter.

(d) For the purpose of this subsection, the two (2) or more employing units mentioned in Section 71-5-11, subsection H(5) or (6), shall be treated as a single employing unit. The department may, of its own motion, cancel and terminate the effect of registrations for purposes of its accounting records in cases where it has found that employing units, duly registered as covered employers under the chapter, have died, ceased business or removed from the state without applying for termination of coverage, provided that the rights of claimants for benefits shall not be affected thereby.

(3)(a) An employing unit, not otherwise subject to this chapter, which files with the department its written election to become an employer subject thereto for not less than two (2) calendar years shall, with the written approval of such election by the department or the executive director, become an employer subject hereto to the same extent as all other employers as of the date stated in such approval, and shall cease to be subject hereto as of January 1 of any calendar year subsequent to such two (2) calendar years only if it files with the department, on or before the thirty-first day of May of such year, a written application for termination of coverage thereunder.

(b) Any employing unit, for which services that do not constitute employment as defined in this chapter are performed, may file with the department a written election that all such services performed by individuals in its employ in one or more distinct establishments or places of business shall be deemed to constitute employment by an employer for all purposes of this chapter for not less than two (2) calendar years. Upon written approval of such election by the department, such services shall be deemed to constitute employment subject to this chapter from and after the date stated in such approval. Such services shall cease to be deemed employment subject

hereto as of January 1 of any calendar year subsequent to such two (2) calendar years only if, prior to the thirty-first day of May of such year, such employing unit has filed with the department a written notice to that effect.

(4)(a) Prior to January 1, 1978, any political subdivision of this state may elect to cover under this chapter, for a period of not less than two (2) calendar years, services performed by employees in all of the hospitals and institutions of higher learning, as defined in Section 71-5-11, subsection M or N, operated by such political subdivision. Election is to be made by filing with the department a notice of such election at least thirty (30) days prior to the effective date of such election. The election may exclude any services described in Section 71-5-11, subsection I(5). Any political subdivision electing coverage under this subsection shall make payments in lieu of contributions with respect to benefits attributable to such employment as provided with respect to nonprofit organizations in subsections (b) and (c) of Section 71-5-357.

(b) Prior to January 1, 1978, the provisions in Section 71-5-511, subsection (g) with respect to benefit rights based on service for state and nonprofit institutions of higher learning shall be applicable also to service covered by an election under this section.

(c) Prior to January 1, 1978, the amounts required to be paid in lieu of contributions by any political subdivision under this section shall be billed and payment made as provided in subsections (b) and (c) of Section 71-5-357.

(d) Prior to January 1, 1978, an election under this section, after having been in effect for not less than two (2) calendar years, may be terminated by filing with the department written notice not later than thirty (30) days preceding the last day of the calendar year in which the termination is to be effective. Such termination becomes effective as of the first day of the next ensuing calendar year with respect to services performed on and after that date.

HISTORY: Codes, 1942, § 7393; Laws, 1940, ch. 295; Laws, 1955, Ex. ch. 93, § 1; Laws, 1971, ch. 519, § 9; Laws, 1977, ch. 497, § 6; Laws, 2013, ch. 309, § 16, eff from and after passage (approved March 6, 2013).

Amendment Notes — The 2013 amendment substituted "department" for "commission" and updated references to subsections in Section 71-5-11 throughout the section.

§ 71-5-367. Collection by warrant.

If an employer shall file a report in proper form and in proper amount, but shall fail to pay the amount of contributions shown to be due thereby at the time of such filing, or if an employer shall fail to pay any assessment as provided and made under Section 71-5-365 within fifteen (15) days after such assessment has become final as herein provided, the department may issue a warrant under its official seal, directed to the sheriff of any county of the state, commanding him to levy upon and sell the real and personal property of such employer as has defaulted in the payment of such contributions or assessments, which may be found within his county, for the payment of the amount

thereof, together with interest, damages, if any, assessed for failure to make and file a report or a corrected or sufficient report, and an additional sum not exceeding one hundred percent (100%) of the amount of the unpaid contributions due, in the discretion of the department, as damages for failure to pay, if not already assessed under Section 71-5-365 and the costs of executing the warrant and to return such warrant to the department, and to pay to it the money collected by virtue thereof on the date specified therein. The department shall cause to be delivered to the clerk of the circuit court a copy of such warrant issued to the sheriff. Such clerk shall enter in the judgment roll, in the column for judgment debtors, the name of the employer mentioned in the warrant and, in appropriate columns, the amount of contributions, interest and damages for which the warrant is issued, a notation that the lien covers all previous, current and future periods for the life of the lien, and the date when such copy is filed. Thereupon the amount of such warrant so filed and entered shall become a lien upon the title to and interest in all real and personal property, including choses in action against negotiable instruments not past due, of the employer against whom the warrant is issued in the same manner as a judgment duly enrolled in the office of such clerk. Any such liens shall cover all contributions, interest and damages owed to the department from previous, current and future periods until the expiration of such lien or until the amount of the lien is fully satisfied. Such judgment shall not be a lien upon the property of the employer for a period of more than seven (7) years from the date of filing of the notice of the tax lien for failure to pay contributions, damages and interest unless action be brought thereon before the expiration of such time or unless the department refiles such notice of tax lien before the expiration of such time. The judgment shall be a lien upon the property of the employer for a period of seven (7) years from the date of refiling such notice of tax lien unless action be brought thereon before the expiration of such time or unless the department refiles such notice of tax lien before the expiration of such time. There shall be no limit upon the number of times the department may refile notices of tax liens. The sheriff shall proceed upon the warrant in the same manner and with like effect as that provided by law in respect to executions issued against property upon judgments or in attachment proceedings of a court of record, and the remedies by garnishment shall apply; and for his services in executing the warrant the sheriff shall be entitled to the same fees, which he may collect in the same manner.

The department may elect to issue the warrant directly to the circuit clerk of any county of this state for enrollment upon the judgment rolls of the county. In such case, the clerk shall enter in the judgment roll, in the column for judgment debtors, the name of the employer mentioned in the warrant and, in appropriate columns, the amount of contributions, interest and damages for which the warrant is issued, a notation that the lien covers all previous, current and future periods for the life of the lien, and the date when such warrant is filed. The lien shall have the same effect and remedies as that provided by law in respect to executions issued against property upon judgments or in attachment proceedings of a court of record, and the remedies by garnishment shall apply.

All warrants issued by the department for the collection of any unemployment tax or for an overpayment of benefits imposed by statute and collected by the department shall be used to levy on salaries, compensation or other monies due the delinquent employer or claimant. No such warrant shall be issued until after the delinquent employer or claimant has exhausted all appeal rights associated with the debt. The warrants shall be served by mail or by delivery by an agent of the department on the person or entity responsible or liable for the payment of the monies due the delinquent employer or claimant. Once served, the employer or other person owing compensation due the delinquent employer or claimant shall pay the monies over to the department in complete or partial satisfaction of the liability. An answer shall be made within thirty (30) days after service of the warrant in the form and manner determined satisfactory by the department. Failure to pay the money over to the department as required by this section shall result in the served party being personally liable for the full amount of the monies owed and the levy and collection process may be issued against the party in the same manner as other debts owed to the department. Except as otherwise provided by this section, the answer, the amount payable under the warrant and the obligation of the payor to continue payment shall be governed by the garnishment laws of this state but shall be payable to the department.

HISTORY: Codes, 1942, § 7425; Laws, 1940, ch. 295, § 12; Laws, 1948, ch. 412, § 9c; Laws, 1958, ch. 533, § 7c; Laws, 1968, ch. 561, § 3c; Laws, 1995, ch. 507, § 5; Laws, 1996, ch. 464, § 2; Laws, 2000, ch. 508, § 1; Laws, 2013, ch. 309, § 8, eff from and after passage (approved March 6, 2013).

Amendment Notes — The 2013 amendment deleted the former last paragraph which read: "On the suggestion of the commission, in writing, that any person is indebted to an employer named in any warrant which has been entered on the judgment roll in the office of the circuit clerk of any county, or has property of such employer in his hands, or knows of some other person who is so indebted, or who has effects or property of such employer in his hands, it shall be the duty of the clerk of the circuit court of such county to issue a writ of garnishment directed to the sheriff or proper officer, commanding him to summon such person as garnishee to appear at a term of the circuit court of the county, or a term of the county court, as in cases provided by law for garnishment upon the judgments of such court, to answer accordingly. The circuit court or county court, as the case may be, shall assume full jurisdiction over the subject matter and the parties, and all the provisions of law with respect to garnishment proceedings instituted in the circuit court under Sections 11-35-1 through 11-35-61 of the Mississippi Code of 1972, shall be applicable as far as possible thereto"; added the last paragraph; and substituted "department" for "commission" throughout the section.

§ 71-5-389. Setoff against tax refunds for debts owed to Mississippi Department of Employment Security; submission of debts to Department of Revenue; notice to debtor; transfer of funds to Department of Revenue; hearings; appeals; confidentiality.

(1) For the purposes of this section, the following terms shall have the respective meanings ascribed by this section:

(a) "Claimant agency" means the Mississippi Department of Employment Security.

(b) "Debtor" means any individual, corporation or partnership owing money or having a delinquent account with any claimant agency, which obligation has not been adjudicated satisfied by court order, set aside by court order, or discharged in bankruptcy.

(c) "Debt" means any sum due and owing any claimant agency, including costs, court costs, fines, penalties and interest which have accrued through contract, subrogation, tort, operation of law, or any other legal theory regardless of whether there is an outstanding judgment for that sum which is legally collectible and for which a collection effort has been or is being made.

(d) "Department" or "Department of Revenue" means the Department of Revenue of the State of Mississippi.

(e) "Refund" means the Mississippi income tax refund which the department determines to be due any individual taxpayer, corporation or partnership.

(2) The collection remedy authorized by this section is in addition to and is not substitution for any other remedy available by law.

(3)(a) A claimant agency may submit debts in excess of Twenty-five Dollars ($25.00) owed to it to the department for collection through setoff, under the procedure established by this section, except in cases where the validity of the debt is legitimately in dispute, an alternate means of collection is pending and believed to be adequate, or such collection would result in a loss of federal funds or federal assistance.

(b) Upon the request of a claimant agency, the department shall set off any refund, as defined herein, against the sum certified by the claimant agency as provided in this section.

(4)(a) Within the time frame specified by the department, a claimant agency seeking to collect a debt through setoff shall supply the information necessary to identify each debtor whose refund is sought to be set off and certify the amount of debt or debts owed by each such debtor.

(b) If a debtor identified by a claimant agency is determined by the department to be entitled to a refund of at least Twenty-five Dollars ($25.00), the department shall transfer an amount equal to the refund owed, not to exceed the amount of the claimed debt certified, to the claimant agency. The Department of Revenue shall send the excess amount to the debtor within a reasonable time after such excess is determined. At the time of the transfer of funds to a claimant agency pursuant to this paragraph (b), the Department of Revenue shall notify the taxpayer or taxpayers whose refund is sought to be set off that the transfer has been made. Such notice shall clearly set forth the name of the debtor, the manner in which the debt arose, the amount of the claimed debt, the transfer of funds to the claimant agency pursuant to this paragraph (b) and the intention to set off the refund against the debt, the amount of the refund in excess of the claimed debt, the taxpayer's opportunity to give written notice to contest the setoff within

thirty (30) days of the date of mailing of the notice, the name and mailing address of the claimant agency to which the application for such a hearing must be sent, and the fact that the failure to apply for such a hearing, in writing, within the thirty-day period will be deemed a waiver of the opportunity to contest the setoff. In the case of a joint return or a joint refund, the notice shall also state the name of the taxpayer named in the return, if any, against whom no debt is claimed, the fact that a debt is not claimed against such taxpayer, the fact that such taxpayer is entitled to receive a refund if it is due him regardless of the debt asserted against his spouse, and that in order to obtain a refund due him such taxpayer must apply in writing for a hearing with the claimant agency named in the notice within thirty (30) days of the date of the mailing of the notice. If a taxpayer fails to apply in writing for such a hearing within thirty (30) days of the mailing of such notice, he will have waived his opportunity to contest the setoff.

(c) Upon receipt of funds transferred from the Department of Revenue pursuant to paragraph (b) of this subsection, the claimant agency shall deposit and hold such funds in an escrow account until a final determination of the validity of the debt.

(d) The claimant agency shall pay the Department of Revenue a fee, not to exceed Seventeen Dollars ($17.00) in each case in which a tax refund is identified as being available for offset. Such fees shall be deposited by the Department of Revenue into a special fund hereby created in the State Treasury, out of which the Legislature shall appropriate monies to defray expenses of the Department of Revenue in employing personnel to administer the provisions of this section.

(5)(a) When the claimant agency receives a protest or an application in writing from a taxpayer within thirty (30) days of the notice issued by the Department of Revenue, the claimant agency shall set a date to hear the protest and give notice to the taxpayer through the United States Postal Service or electronic digital transfer of the date so set. The time and place of such hearing shall be designated in such notice and the date set shall not be less than fifteen (15) days from the date of such notice. If, at the hearing, the sum asserted as due and owing is found not to be correct, an adjustment to the claim may be made. The claimant agency shall give notice to the debtor of its final determination as provided in paragraph (c) of this subsection.

(b) No issues shall be reconsidered at the hearing which have been previously litigated.

(c) If any debtor is dissatisfied with the final determination made at the hearing by the claimant agency, he may appeal the final determination to the circuit court of the county in which the main office of the claimant agency is located by filing notice of appeal with the administrative head of the claimant agency and with the clerk of the circuit court of the county in which the appeal shall be taken within thirty (30) days from the date the notice of final determination was given by the claimant agency.

(6)(a) Upon final determination of the amount of the debt due and owing by means of hearing or by the taxpayer's default through failure to comply

with timely request for review, the claimant agency shall remove the amount of the debt due and owing from the escrow account and credit such amount to the debtor's obligation.

(b) Upon transfer of the debt due and owing from the escrow account to the credit of the debtor's account, the claimant agency shall notify the debtor in writing of the finalization of the setoff. Such notice shall include a final accounting if the refund which was set off, including the amount of the refund to which the debtor was entitled prior to the setoff, the amount of the debt due and owing, the amount of the collection fee paid to the Department of Revenue, the amount of the refund in excess of the debt which was returned to the debtor by the Department of Revenue, and the amount of the funds transferred to the claimant agency in excess of the debt determined to be due and owing at a hearing, if such a hearing was held. At such time, the claimant agency shall refund to the debtor the amount of the claimed debt originally certified and transferred to it by the Department of Revenue in excess of the amount of debt finally found to be due and owing.

(7)(a) Notwithstanding the provision that prohibits disclosure by the Department of Revenue of the contents of taxpayer records or information and notwithstanding any other confidentiality statute, the Department of Revenue may provide to a claimant agency all information necessary to accomplish and effectuate the intent of the section.

(b) The information obtained by claimant agency from the Department of Revenue in accordance with the provisions of this section shall retain its confidentiality and shall only be used by a claimant agency in the pursuit of its debt collection duties and practices; and any employee or prior employee of any claimant agency who unlawfully discloses any such information for any other purpose, except as specifically authorized by law, shall be subject to the same penalties specified by law for unauthorized confidential information by an agent or employee of the Department of Revenue.

HISTORY: Laws, 2005, ch. 400, § 2; Laws, 2009, ch. 492, § 138; Laws, 2013, ch. 309, § 9, eff from and after passage (approved March 6, 2013).

Amendment Notes — The 2013 amendment inserted "corporation or partnership" in (1)(b); added "corporation or partnership" at the end of (1)(e); substituted "through the United States Postal Service or electronic digital transfer" for "by registered or certified mail" at the end of the first sentence of (5)(a).

ARTICLE 9.

UNEMPLOYMENT COMPENSATION FUND.

Sec.
71-5-453. Accounts and deposits.
71-5-455. Withdrawals.

§ 71-5-451. Establishment and control [Repealed effective July 1, 2023].

HISTORY: Codes, 1942, § 7394; Laws, 1940, ch. 295; Laws, 1958, ch. 536, § 1(a); Laws, 1964, ch. 448, § 1(a); Laws, 1971, ch. 519, § 10; Laws, 1982, ch. 383, § 3; Laws, 2004, ch. 572, § 36; reenacted without change, Laws, 2008, 1st Ex Sess, ch. 30, § 36; reenacted without change, Laws, 2010, ch. 559, § 35; reenacted without change, Laws, 2011, ch. 471, § 36; reenacted without change, Laws, 2012, ch. 515, § 36, eff from and after July 1, 2012; reenacted without change, Laws, 2019, ch. 451, § 36, eff from and after April 3, 2019.

Editor's Notes — Laws of 2004, ch. 572, § 60, as amended by Laws of 2008, 1st Ex Sess, ch. 30, § 58, as amended by Laws of 2010, ch. 559, § 58, as amended by Laws of 2011, ch. 471, § 59, as amended by Laws of 2012, ch. 515, § 58, as amended by Laws of 2019, ch. 451, § 58, and as amended by Laws of 2020, ch. 476, § 7, provides:

"SECTION 60. Sections 8 through 59 of this act shall stand repealed on July 1, 2023."

This section was reenacted without change by Laws of 2019, ch. 451, § 36, effective from and after April 3, 2019. Since the language of the section as it appears in the main volume is unaffected by the reenactment, it is not reprinted in this supplement.

Amendment Notes — The 2012 amendment reenacted the section without change.

The 2019 amendment, effective April 3, 2019, reenacted the section without change.

§ 71-5-453. Accounts and deposits.

The department shall be the treasurer and custodian of the fund, and shall administer such fund in accordance with the directions of the department, and shall issue its warrants upon it in accordance with such regulations as the department shall prescribe. The department shall maintain within the fund three (3) separate accounts: (a) a clearing account, (b) an unemployment trust fund account, and (c) a benefit payment account. All monies payable to the fund, upon receipt thereof by the department, shall be immediately deposited in the clearing account. Refunds payable pursuant to Section 71-5-383 may be paid from the clearing account by the department. Transfers pursuant to Section 71-5-114 of all interest, penalties and damages collected shall be made to the Special Employment Security Administration Fund as soon as practicable after the end of each calendar quarter. Workforce Enhancement Training contributions, State Workforce Investment contributions and Mississippi Works contributions shall be deposited into the Workforce Investment and Training Holding Account as described in this section. All other monies in the clearing account shall be immediately deposited with the Secretary of the Treasury of the United States of America to the Unemployment Trust Fund account for the State of Mississippi, established and maintained pursuant to Section 904 of the Social Security Act, as amended, any provisions of law in this state relating to the deposit, administration, release or disbursement of monies in the possession or custody of this state to the contrary notwithstanding. The benefit account shall consist of all monies requisitioned from this state's account in the Unemployment Trust Fund. Except as herein otherwise provided, monies in the clearing and benefit accounts may be deposited by the department, in any bank or public depository in which general funds of the

state may be deposited, but no public deposit insurance charge or premium shall be paid out of the fund. The department shall be liable for the faithful performance of its duties in connection with the Unemployment Compensation Fund under this chapter. A Workforce Investment and Training Holding Account shall be established by and maintained under the control of the Mississippi Department of Employment Security. Contributions collected pursuant to the provisions in this chapter for the Workforce Enhancement Training Fund, State Workforce Investment Fund and the Mississippi Works Fund shall be transferred from the clearing account into the Workforce Investment and Training Holding Account on the same schedule and under the same conditions as funds transferred to the Unemployment Compensation Fund. Such funds shall remain on deposit in the holding account for a period of thirty (30) days. After such period, Workforce Enhancement Training contributions shall be transferred to the appropriate Mississippi Community College Board Treasury Account, with oversight provided by the Mississippi Office of Workforce Development, by the department. The State Workforce Investment contributions shall be transferred to the State Workforce Investment Board bank account established by the department, and the department shall have the authority to deposit and disburse funds from the State Workforce Investment Board bank account as directed by the State Workforce Investment Board. The Mississippi Works contributions shall be transferred to the Mississippi Department of Employment Security Treasury Account for the Mississippi Works Fund. Such transfers shall occur within fifteen (15) days after the funds have resided in the Workforce Investment and Training Holding Account for thirty (30) days. One (1) such transfer shall be made monthly, but the department, in its discretion, may make additional transfers in any month. In the event such funds transferred are subsequently determined to be erroneously paid or collected, or if deposit of such funds is denied or rejected by the banking institution for any reason, or deposits are unable to clear drawer's account for any reason, the funds must be reimbursed by the recipient of such funds within thirty (30) days of mailing of notice by the department demanding such refund, unless funds are available in the Workforce Investment and Training Holding Account. In that event such amounts shall be immediately withdrawn from the Workforce Investment and Training Holding Account by the department and redeposited into the clearing account.

HISTORY: Codes, 1942, § 7395; Laws, 1940, ch. 295; Laws, 1958, ch. 536, § 1(b); Laws, 1964, ch. 448, § 1(b); Laws, 1982, ch. 383, § 4; Laws, 2005, ch. 437, § 3; Laws, 2013, ch. 309, § 10; Laws, 2014, ch. 504, § 3; Laws, 2016, ch. 302, § 3, eff from and after passage (approved Mar. 21, 2016); Laws, 2020, ch. 476, § 6, eff from and after July 1, 2020.

Amendment Notes — The 2013 amendment substituted "department" for "state Treasurer" and "Mississipp Department of Employment Security" throughout; deleted "ex officio" preceding "treasurer" in the first sentence; inserted "payment" preceding "account" in the second sentence; substituted "shall be immediately deposited" for "shall be forwarded to the Treasurer, who shall immediately deposit them" in the third sentence; substituted "by the department" for "upon warrants issued by the Treasurer

under the direction of the department" in the fourth sentence; substituted "Unemployment Trust Fund account for the State of Mississippi" for "credit of the account of this state in the Unemployment Trust Fund" in the fifth sentence; and made minor stylistic changes.

The 2014 amendment, in the sixth sentence, deleted "training" following "Workforce" and "Fund" following "Training Holding", inserted "Training and State Workforce Investment" preceding "contributions shall be deposited", and substituted "Investment and" for "enhancement"; in the eleventh sentence, deleted "Mississippi" preceding "Workforce", "Enhancement Fund" preceding "Holding Account", inserted "Investment and Training" following "Workforce", "Mississippi" following "the control of the", and "of Employment Security" at the end of the sentence; in the twelfth sentence, deleted "The workforce training enhancement" from the beginning, "Mississippi" following "clearing account into the", and "Enhancement Fund" preceding "Holding Account", inserted additional language following "provisions in this chapter" and "Investment and" following "Workforce"; in the thirteenth sentence, substituted "holding" for "workforce training enhancement fund" and "thirty (30)" for "sixty (60)"; in the fourteenth sentence, inserted "Workforce Enhancement Training" following "After such period", deleted "Mississippi Workforce Enhancement Training Fund by the department, within thirty (30) days" from the end and added "appropriate Mississippi Community . . . by the department"; added the fifteenth and sixteenth sentences; in the seventeenth sentence, inserted "(1)" following "One" at the beginning; in the second to last sentence, inserted "Investment and" following "available in the Workforce", and deleted "Enhancement Fund" preceding "Holding Account"; in the last sentence, substituted "Investment and" for "enhancement", deleted "Fund" preceding "Training Holding", and made a minor stylistic change.

The 2016 amendment rewrote the sixth sentence, which read: "Workforce Enhancement Training and State Workforce Investment contributions shall be deposited into the Workforce Investment and Training Holding Account as described in this section"; in the twelfth sentence, inserted "Fund" following "Enhancement Training" and made a related change, and substituted "Investment Fund and the Mississippi Works Fund shall be transferred" for "Investment funds shall be transferred"; added the sixteenth sentence; and added "after the funds have resided in the Workforce Investment and Training Holding Account for thirty (30) days" at the end of the seventeenth sentence.

The 2020 amendment, in the fourteenth sentence, inserted "with oversight provided by the Mississippi Office of Workforce Development."

§ 71-5-455. Withdrawals.

Monies shall be requisitioned from this state's account in the Unemployment Trust Fund solely for the payment of benefits and in accordance with regulations prescribed by the department, except that monies credited to this state's account pursuant to Section 903 of the Social Security Act, as amended, shall be used exclusively as provided in Section 71-5-457. No monies in the Unemployment Compensation Fund shall be used to pay interest on any funds that might be borrowed for the purposes of this chapter, but any such interest that might be due shall be paid from other sources. The department shall from time to time requisition from the Unemployment Trust Fund such amounts, not exceeding the amount standing to this state's account therein, as it deems necessary for the payment of benefits for a reasonable future period. Such sums shall be immediately deposited by the department in some bank within this state in an account to be known as the "benefit payment account," which shall be under the control of the department and on which said benefit

payment account the department or its duly authorized representative is authorized to draw and issue its checks in payment of benefits to individuals entitled thereto under this chapter. Expenditures of such monies in the benefit account and benefit payment account and refunds from the clearing account shall not be subject to any provisions of law requiring specific appropriations or other formal release by state officers of money in their custody. All warrants shall bear the signature of the department's duly authorized agent for that purpose.

The department shall be subject to the applicable laws pertaining to security of public fund deposits as set forth in Sections 27-105-5 and 27-105-6.

HISTORY: Codes, 1942, § 7396; Laws, 1940, ch. 295; Laws, 1958, ch. 536, § 1(c); Laws, 1964, ch. 448, § 1(c); Laws, 1984, ch. 301, § 3; Laws, 1994, ch. 303, § 3; Laws, 2013, ch. 309, § 11, eff from and after passage (approved March 6, 2013).

Amendment Notes — The 2013 amendment deleted the former fourth and fifth sentences of the first paragraph which read: "Upon receipt thereof the Treasurer shall deposit such monies in the benefit account and shall issue his warrants thereon as hereinafter provided for the purpose of paying benefits. The commission shall requisition from time to time from the Treasurer such lump sum amount as it deems necessary for the payment of benefits for a reasonable future period, and the treasurer shall thereupon issue to the commission his warrant on the benefit account for such lump sum as may be requisitioned"; substituted "All warrants shall bear the signature of the department's" for "All warrants issued by the Treasurer shall bear the signature of the Treasurer and the countersignature of a member of the commission or the commission's"; rewrote the second paragraph which read: "The commission shall require of such bank within this state as it may select as the depository of the 'benefit payment account' security in a sum ten percent (10%) greater than the amounts on deposit in said account at any one time, such security to consist of such securities or surety bond as are required by law of depositories of state funds; and the commission shall take such action as it may deem necessary to safeguard the custody of such security"; and substituted "department" for "commission" throughout the section.

§ 71-5-457. Unemployment trust fund used for payment of administrative expenses [Repealed effective July 1, 2023].

HISTORY: Codes, 1942, § 7396.5; Laws, 1958, ch. 536, § 1(d); Laws, 1964, ch. 448, § 1(d); Laws, 1971, ch. 519, § 11; Laws, 1975, ch. 393; Laws, 1981, ch. 321, § 1; Laws, 1983, ch. 357; Laws, 1984, ch. 301, § 4; Laws, 1991, ch. 449 § 1; Laws, 1998, ch. 372, § 1; Laws, 2004, ch. 572, § 37; reenacted without change, Laws, 2008, 1st Ex Sess, ch. 30, § 37; reenacted without change, Laws, 2010, ch. 559, § 36; reenacted without change, Laws, 2011, ch. 471, § 37; reenacted without change, Laws, 2012, ch. 515, § 37, eff from and after July 1, 2012; reenacted without change, Laws, 2019, ch. 451, § 37, eff from and after April 3, 2019.

Editor's Notes — Laws of 2004, ch. 572, § 60, as amended by Laws of 2008, 1st Ex Sess, ch. 30, § 58, as amended by Laws of 2010, ch. 559, § 58, as amended by Laws of 2011, ch. 471, § 59, as amended by Laws of 2012, ch. 515, § 58, as amended by Laws of 2019, ch. 451, § 58, and as amended by Laws of 2020, ch. 476, § 7, provides:

"SECTION 60. Sections 8 through 59 of this act shall stand repealed on July 1, 2023."

This section was reenacted without change by Laws of 2019, ch. 451, § 37, effective

from and after April 3, 2019. Since the language of the section as it appears in the main volume is unaffected by the reenactment, it is not reprinted in this supplement.

Amendment Notes — The 2012 amendment reenacted the section without change. The 2019 amendment, effective April 3, 2019, reenacted the section without change.

ARTICLE 11.

BENEFITS.

Sec.

71-5-501. Payment.
71-5-503. Weekly benefit amount.
71-5-505. Weekly compensation for unemployment.
71-5-545. Self-Employment Assistance Program.

§ 71-5-501. Payment.

Wages earned for services defined in Section 71-5-11(I)(15)(g), irrespective of when performed, shall not be included for purposes of determining eligibility under Section 71-5-511(e) or weekly benefit amount under Section 71-5-503 nor shall any benefits with respect to unemployment be payable under Section 71-5-505 on the basis of such wages. All benefits shall be paid through employment offices or such other agency or agencies as the department may, by regulation, designate, in accordance with such regulations as the department may prescribe. The department may, by regulation, prescribe that benefits due and payable to claimants who die prior to the receipt or cashing of benefits checks may be paid to the legal representative, dependents, or next of kin, of the deceased as may be found by it to be equitably entitled thereto, and every such payment shall be deemed a valid payment to the same extent as if made to the legal representative of the decedent.

HISTORY: Codes, 1942, § 7373; Laws, 1940, ch. 295, § 1; Laws, 1948, ch. 412, § 2a; Laws, 1952, ch. 383, § 1a; Laws, 1956, ch. 404, § 1a; Laws, 1958, ch. 533, § 1a; Laws, 1968, ch. 561, § 1a; Laws, 1971, ch. 519, § 1; Laws, 2002, ch. 562, § 4; Laws, 2013, ch. 309, § 17, eff from and after passage (approved March 6, 2013).

Joint Legislative Committee Note — Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected a typographical error in a statutory reference in the first sentence. The reference to "Section 71-5-11(H)(15)(g)" was changed to "Section 71-5-11(I)(15)(g)." The Joint Committee ratified the correction at its August 1, 2013, meeting.

Amendment Notes — The 2013 amendment substituted "subsection H(15)(g)" for "subsection J(15)(g)" in the first sentence, and substituted "department" for "commission" throughout the section.

§ 71-5-503. Weekly benefit amount.

An individual's weekly benefit amount for a benefit year shall be one-twenty-sixth (126) of his total wages for insured work paid during that quarter of his base period in which such total wages were highest, computed to the next lower multiple of One Dollar ($1.00), if not a multiple of One Dollar ($1.00).

On or before June 15 of each year, the total wages reported on contribution reports for the preceding calendar year shall be divided by the average monthly number of insured workers (determined by dividing the total insured workers reported on contribution reports pursuant to the regulations of the department for the preceding year by twelve (12)). The average annual wage thus obtained shall be divided by fifty-two (52) and the average weekly wage thus determined rounded to the nearest cent. Sixty percent (60%) of this amount, rounded to the nearest dollar, shall constitute the maximum "weekly benefit amount" paid to any individual whose benefit year commences on or after July 1 of such year and prior to July 1 of the next following year; provided however, that the maximum weekly benefit amount shall not exceed Two Hundred Ten Dollars ($210.00) for any benefit year that begins on or after July 1, 2002, and shall not exceed Two Hundred Thirty Dollars ($230.00) for any benefit year that begins on or after July 1, 2008, and shall not exceed Two Hundred Thirty-five Dollars ($235.00) for any benefit year that begins on or after July 1, 2009. The minimum weekly benefit amount for the individual shall be Thirty Dollars ($30.00). If an individual's weekly benefit amount would compute to less than the said minimum, then such individual would be entitled to no benefits.

An individual's weekly benefit amount, as determined at the beginning of his benefit year, shall constitute his weekly benefit amount throughout such benefit year.

The Mississippi Department of Employment Security, with the assistance of the United States Department of Labor, is directed to generate actuarially sound models for computation of weekly benefit amounts. Such models shall include scenarios for increasing the weekly benefit amounts at each increment from the minimum to the maximum amount and the impact such increments would have on the Unemployment Compensation Fund. Such report shall be provided to the Mississippi Legislature on or before December 31, 2008.

HISTORY: Codes, 1942, § 7374; Laws, 1940, ch. 295, § 1; Laws, 1948, ch. 412, § 2b; Laws, 1952, ch. 383, § 1b; Laws, 1956, ch. 404, § 1b; Laws, 1958, ch. 533, § 1b; Laws, 1968, ch. 561, § 1b; Laws, 1971, ch. 519, § 2; Laws, 1974, ch. 570, § 1; Laws, 1976, ch. 382; Laws, 1979, ch. 465, § 3; Laws, 1982, ch. 349, § 2; Laws, 1983, ch. 364, § 1; Laws, 1984, ch. 438; Laws, 1986, ch. 316, § 1; Laws, 1988, ch. 322, § 2; Laws, 1991, ch. 511, § 3; Laws, 1995, ch. 507, § 6; Laws, 1998, ch. 423, § 1; Laws, 2001, ch. 413, § 1; Laws, 2008, 1st Ex Sess, ch. 43, § 1; reenacted and amended, Laws, 2010, ch. 559, § 37; Laws, 2011, ch. 471, § 38; Laws, 2012, ch. 515, § 38, eff from and after July 1, 2012.

Amendment Notes — The 2012 amendment deleted the former last paragraph.

§ 71-5-505. Weekly compensation for unemployment.

(1) For weeks beginning on or after July 1, 1991, each eligible individual who is totally unemployed or part totally unemployed in any week shall be paid with respect to such week a benefit in an amount equal to his weekly benefit amount less that part of his wages, if any, payable to him with respect to such

week which is in excess of Forty Dollars ($40.00). Such individuals must have been totally unemployed or part totally unemployed for a waiting period of one (1) week during which he earned less than his weekly benefit amount plus Forty Dollars ($40.00). Such benefit for a benefit year effective on or after October 1, 1983, if not a multiple of One Dollar ($1.00), shall be computed to the next lower multiple of One Dollar ($1.00). Provided, however, that remuneration for "inactive duty training" or "unit training assembly" payable to such eligible individual who is a member of any of the reserve components, or remuneration for jury duty pursuant to a lawfully issued summons therefor payable to such eligible individual, shall not be considered wages which serve to reduce the otherwise payable benefit amount.

In determining whether an eligible individual is unemployed during a week, the date of commencing a shift shall determine the week for which the earnings are deducted.

(2) However, the one-week waiting period described herein shall be waived if the President of the United States declares a major disaster with regard to individual assistance in accordance with Section 401 of The Robert T. Stafford Disaster Relief and Emergency Assistance Act. The department, in its discretion, shall have the authority to noncharge an employer account for any benefits paid for unemployment due directly to such disaster, but only in those counties and/or areas identified by the disaster area for individual assistance.

HISTORY: Codes, 1942, § 7375; Laws, 1940, ch. 295, § 1; Laws, 1948, ch. 412, § 2c; Laws, 1952, ch. 383, § 1c; Laws, 1956, ch. 404, § 1c; Laws, 1958, ch. 533, § 1c; Laws, 1968, ch. 561, § 1c; Laws, 1979, ch. 381; Laws, 1983, ch. 364, § 2; Laws, 1984, ch. 498, § 1; Laws, 1991, ch. 511, § 4; Laws, 1999, ch. 306, § 1; Laws, 2007, ch. 606, § 12; Laws, 2013, ch. 309, § 12, eff from and after passage (approved March 6, 2013).

Amendment Notes — The 2013 amendment in (2), inserted "with regard to individual assistance" in the first sentence, and added "but only in those counties and/or areas identified by the disaster area for individual assistance" at the end of the last sentence.

§ 71-5-511. Eligibility conditions [Repealed effective July 1, 2023].

An unemployed individual shall be eligible to receive benefits with respect to any week only if the department finds that:

(a)(i) He has registered for work at and thereafter has continued to report to the department in accordance with such regulations as the department may prescribe; except that the department may, by regulation, waive or alter either or both of the requirements of this subparagraph as to such types of cases or situations with respect to which it finds that compliance with such requirements would be oppressive or would be inconsistent with the purposes of this chapter; and

(ii) He participates in reemployment services, such as job search assistance services, if, in accordance with a profiling system established by

the department, it has been determined that he is likely to exhaust regular benefits and needs reemployment services, unless the department determines that:

1. The individual has completed such services; or

2. There is justifiable cause for the claimant's failure to participate in such services.

(b) He has made a claim for benefits in accordance with the provisions of Section 71-5-515 and in accordance with such regulations as the department may prescribe thereunder.

(c) He is able to work, available for work and actively seeking work.

(d) He has been unemployed for a waiting period of one (1) week. No week shall be counted as a week of unemployment for the purposes of this subsection:

(i) Unless it occurs within the benefit year which includes the week with respect to which he claims payment of benefits;

(ii) If benefits have been paid with respect thereto;

(iii) Unless the individual was eligible for benefits with respect thereto, as provided in Sections 71-5-511 and 71-5-513, except for the requirements of this subsection.

(e) For weeks beginning on or before July 1, 1982, he has, during his base period, been paid wages for insured work equal to not less than thirty-six (36) times his weekly benefit amount; he has been paid wages for insured work during at least two (2) quarters of his base period; and he has, during that quarter of his base period in which his total wages were highest, been paid wages for insured work equal to not less than sixteen (16) times the minimum weekly benefit amount. For benefit years beginning after July 1, 1982, he has, during his base period, been paid wages for insured work equal to not less than forty (40) times his weekly benefit amount; he has been paid wages for insured work during at least two (2) quarters of his base period, and he has, during that quarter of his base period in which his total wages were highest, been paid wages for insured work equal to not less than twenty-six (26) times the minimum weekly benefit amount. For purposes of this subsection, wages shall be counted as "wages for insured work" for benefit purposes with respect to any benefit year only if such benefit year begins subsequent to the date on which the employing unit by which such wages were paid has satisfied the conditions of Section 71-5-11, subsection H, or Section 71-5-361, subsection (3), with respect to becoming an employer.

(f) No individual may receive benefits in a benefit year unless, subsequent to the beginning of the next preceding benefit year during which he received benefits, he performed service in "employment" as defined in Section 71-5-11, subsection I, and earned remuneration for such service in an amount equal to not less than eight (8) times his weekly benefit amount applicable to his next preceding benefit year.

(g) Benefits based on service in employment defined in Section 71-5-11, subsection I(3) and I(4), and Section 71-5-361, subsection (4) shall be payable in the same amount, on the same terms, and subject to the same conditions

as compensation payable on the basis of other service subject to this chapter, except that benefits based on service in an instructional, research or principal administrative capacity in an institution of higher learning (as defined in Section 71-5-11, subsection N) with respect to service performed prior to January 1, 1978, shall not be paid to an individual for any week of unemployment which begins during the period between two (2) successive academic years, or during a similar period between two (2) regular terms, whether or not successive, or during a period of paid sabbatical leave provided for in the individual's contract, if the individual has a contract or contracts to perform services in any such capacity for any institution or institutions of higher learning for both such academic years or both such terms.

(h) Benefits based on service in employment defined in Section 71-5-11, subsection I(3) and I(4), shall be payable in the same amount, on the same terms and subject to the same conditions as compensation payable on the basis of other service subject to this chapter, except that:

(i) With respect to service performed in an instructional, research or principal administrative capacity for an educational institution, benefits shall not be paid based on such services for any week of unemployment commencing during the period between two (2) successive academic years, or during a similar period between two (2) regular but not successive terms, or during a period of paid sabbatical leave provided for in the individual's contract, to any individual, if such individual performs such services in the first of such academic years or terms and if there is a contract or a reasonable assurance that such individual will perform services in any such capacity for any educational institution in the second of such academic years or terms, and provided that subsection (g) of this section shall apply with respect to such services prior to January 1, 1978. In no event shall benefits be paid unless the individual employee was terminated by the employer.

(ii) With respect to services performed in any other capacity for an educational institution, benefits shall not be paid on the basis of such services to any individual for any week which commences during a period between two (2) successive academic years or terms, if such individual performs such services in the first of such academic years or terms and there is a reasonable assurance that such individual will perform such services in the second of such academic years or terms, except that if compensation is denied to any individual under this subparagraph and such individual was not offered an opportunity to perform such services for the educational institution for the second of such academic years or terms, such individual shall be entitled to a retroactive payment of compensation for each week for which the individual filed a timely claim for compensation and for which compensation was denied solely by reason of this clause. In no event shall benefits be paid unless the individual employee was terminated by the employer.

(iii) With respect to services described in subsection (h)(i) and (ii), benefits shall not be payable on the basis of services in any such capacities

to any individual for any week which commences during an established and customary vacation period or holiday recess if such individual performs such services in the first of such academic years or terms, or in the period immediately before such vacation period or holiday recess, and there is a reasonable assurance that such individual will perform such services in the period immediately following such vacation period or holiday recess.

(iv) With respect to any services described in subsection (h)(i) and (ii), benefits shall not be payable on the basis of services in any such capacities as specified in subsection (h)(i), (ii) and (iii) to any individual who performed such services in an educational institution while in the employ of an educational service agency. For purposes of this subsection, the term "educational service agency" means a governmental agency or governmental entity which is established and operated exclusively for the purpose of providing such services to one or more educational institutions.

(v) With respect to services to which Sections 71-5-357 and 71-5-359 apply, if such services are provided to or on behalf of an educational institution, benefits shall not be payable under the same circumstances and subject to the same terms and conditions as described in subsection (h)(i), (ii), (iii) and (iv).

(i) Subsequent to December 31, 1977, benefits shall not be paid to any individual on the basis of any services substantially all of which consist of participating in sports or athletic events or training or preparing to so participate, for any week which commences during the period between two (2) successive sports seasons (or similar periods) if such individual performs such services in the first of such seasons (or similar periods) and there is a reasonable assurance that such individual will perform such services in the later of such seasons (or similar periods).

(j)(i) Subsequent to December 31, 1977, benefits shall not be payable on the basis of services performed by an alien, unless such alien is an individual who was lawfully admitted for permanent residence at the time such services were performed, was lawfully present for purposes of performing such services, or was permanently residing in the United States under color of law at the time such services were performed (including an alien who was lawfully present in the United States as a result of the application of the provisions of Section 203(a)(7) or Section 212(d)(5) of the Immigration and Nationality Act).

(ii) Any data or information required of individuals applying for benefits to determine whether benefits are not payable to them because of their alien status shall be uniformly required from all applicants for benefits.

(iii) In the case of an individual whose application for benefits would otherwise be approved, no determination that benefits to such individual are not payable because of his alien status shall be made, except upon a preponderance of the evidence.

(k) An individual shall be deemed prima facie unavailable for work, and therefore ineligible to receive benefits, during any period which, with respect

to his employment status, is found by the department to be a holiday or vacation period.

(*l*) A temporary employee of a temporary help firm is considered to have left the employee's last work voluntarily without good cause connected with the work if the temporary employee does not contact the temporary help firm for reassignment on completion of an assignment. A temporary employee is not considered to have left work voluntarily without good cause connected with the work under this paragraph unless the temporary employee has been advised in writing:

(i) That the temporary employee is obligated to contact the temporary help firm on completion of assignments; and

(ii) That unemployment benefits may be denied if the temporary employee fails to do so.

HISTORY: Codes, 1972, § 7378; Laws, 1940, ch. 295, § 2; Laws, 1948, ch. 412, § 3; Laws, 1954, ch. 353, § 1; Laws, 1958, ch. 533, § 2; Laws, 1968, ch. 561, § 2; Laws, 1971, ch. 519, § 4; Laws, 1977, ch. 497, § 7; Laws, 1978, ch. 339, § 2; Laws, 1981, ch. 466, § 1; Laws, 1982, ch. 480, § 2; Laws, 1983, ch. 358; Laws, 1984, ch. 498, § 2; Laws, 1990, ch. 417, § 1; Laws, 1994, ch. 357, § 1; Laws, 1995, ch. 507, § 7; Laws, 2004, ch. 572, § 38; Laws, 2007, ch. 606, § 13; reenacted without change, Laws, 2008, 1st Ex Sess, ch. 30, § 38; reenacted without change, Laws, 2010, ch. 559, § 380; reenacted without change, Laws, 2011, ch. 471, § 39; reenacted without change, Laws, 2012, ch. 515, § 39; Laws, 2013, ch. 309, § 13, eff from and after passage (approved March 6, 2013); reenacted without change, Laws, 2019, ch. 451, § 38, eff from and after April 3, 2019.

Editor's Notes — Laws of 2004, ch. 572, § 60, as amended by Laws of 2008, 1st Ex Sess, ch. 30, § 58, as amended by Laws of 2010, ch. 559, § 58, as amended by Laws of 2011, ch. 471, § 59, as amended by Laws of 2012, ch. 515, § 58, as amended by Laws of 2019, ch. 451, § 58, and as amended by Laws of 2020, ch. 476, § 7, provides:

"SECTION 60. Sections 8 through 59 of this act shall stand repealed on July 1, 2023."

Amendment Notes — The 2012 amendment reenacted the section without change.

The 2013 amendment updated references to subsections in Section 71-5-11 throughout; and in (c), substituted "available for work and actively seeking work" for "and is available for work."

The 2019 amendment, effective April 3, 2019, reenacted the section without change.

§ 71-5-513. Disqualifications [Repealed effective July 1, 2023].

A. An individual shall be disqualified for benefits:

(1)(a) For the week, or fraction thereof, which immediately follows the day on which he left work voluntarily without good cause, if so found by the department, and for each week thereafter until he has earned remuneration for personal services performed for an employer, as in this chapter defined, equal to not less than eight (8) times his weekly benefit amount, as determined in each case; however, marital, filial and domestic circumstances and obligations shall not be deemed good cause within the meaning of this subsection. Pregnancy shall not be deemed to be a marital, filial or domestic circumstance for the purpose of this subsection.

(b) For the week, or fraction thereof, which immediately follows the day on which he was discharged for misconduct connected with his work,

if so found by the department, and for each week thereafter until he has earned remuneration for personal services performed for an employer, as in this chapter defined, equal to not less than eight (8) times his weekly benefit amount, as determined in each case.

(c) The burden of proof of good cause for leaving work shall be on the claimant, and the burden of proof of misconduct shall be on the employer.

(2) For the week, or fraction thereof, with respect to which he willfully makes a false statement, a false representation of fact, or willfully fails to disclose a material fact for the purpose of obtaining or increasing benefits under the provisions of this law, if so found by the department, and such individual's maximum benefit allowance shall be reduced by the amount of benefits so paid to him during any such week of disqualification; and additional disqualification shall be imposed for a period not exceeding fifty-two (52) weeks, the length of such period of disqualification and the time when such period begins to be determined by the department, in its discretion, according to the circumstances in each case.

(3) If the department finds that he has failed, without good cause, either to apply for available suitable work when so directed by the employment office or the department, to accept suitable work when offered him, or to return to his customary self-employment (if any) when so directed by the department, such disqualification shall continue for the week in which such failure occurred and for not more than the twelve (12) weeks which immediately follow such week, as determined by the department according to the circumstances in each case.

(a) In determining whether or not any work is suitable for an individual, the department shall consider among other factors the degree of risk involved to his health, safety and morals, his physical fitness and prior training, his experience and prior earnings, his length of unemployment and prospects for securing local work in his customary occupation, and the distance of the available work from his residence; however, offered employment paying the minimum wage or higher, if such minimum or higher wage is that prevailing for his customary occupation or similar work in the locality, shall be deemed to be suitable employment after benefits have been paid to the individual for a period of eight (8) weeks.

(b) Notwithstanding any other provisions of this chapter, no work shall be deemed suitable and benefits shall not be denied under this chapter to any otherwise eligible individual for refusing to accept new work under any of the following conditions:

(i) If the position offered is vacant due directly to a strike, lockout or other labor dispute;

(ii) If the wages, hours or other conditions of the work offered are substantially unfavorable or unreasonable to the individual's work. The department shall have the sole discretion to determine whether or not there has been an unfavorable or unreasonable condition placed on the individual's work. Moreover, the department may consider, but shall not be limited to a consideration of, whether or not the unfavorable

condition was applied by the employer to all workers in the same or similar class or merely to this individual;

(iii) If as a condition of being employed the individual would be required to join a company union or to resign from or refrain from joining any bona fide labor organization;

(iv) If unsatisfactory or hazardous working conditions exist that could result in a danger to the physical or mental well-being of the worker. In any such determination the department shall consider, but shall not be limited to a consideration of, the following: the safety measures used or the lack thereof and the condition of equipment or lack of proper equipment. No work shall be considered hazardous if the working conditions surrounding a worker's employment are the same or substantially the same as the working conditions generally prevailing among workers performing the same or similar work for other employers engaged in the same or similar type of activity.

(c) Pursuant to Section 303(1) of the Social Security Act (42 USCS 503), the department may conduct drug tests of applicants for unemployment compensation for the unlawful use of controlled substances as a condition for receiving such compensation, if such applicant:

(i) Was terminated from employment with the claimant's most recent employer, as defined by Mississippi law, because of the unlawful use of controlled substances; or

(ii) Is an individual for whom suitable work, as defined by Mississippi law, is only available in an occupation (as determined under regulations issued by the U.S. Secretary of Labor) that requires drug testing.

The department may deny unemployment compensation to any applicant based on the result of a drug test conducted by the department in accordance with this subsection. A positive drug test result shall be deemed by the department to be a failure to accept suitable work, and shall subject the applicant to the disqualification provisions set forth in this subsection A(3). During the disqualification period imposed by the department under this subsection, the individual may provide information to end the disqualification period early by submitting acceptable proof to the department of a negative test result from a testing facility approved by the department.

(iii) Pursuant to the provisions set forth in this subsection A(3)(c), the department shall have the authority to institute a random drug testing program for all individuals who meet the requirements set forth in this section. Moreover, the department shall have the authority to create the necessary regulations, policies rules, guidelines and procedures to implement such a program.

Any term or provision set forth in this subsection A(3)(c) that otherwise conflicts with federal or state law shall be disregarded but shall not, in any way, affect the remaining provisions.

(4) For any week with respect to which the department finds that his total unemployment is due to a stoppage of work which exists because of a

labor dispute at a factory, establishment or other premises at which he is or was last employed; however, this subsection shall not apply if it is shown to the satisfaction of the department:

(a) He is unemployed due to a stoppage of work occasioned by an unjustified lockout, if such lockout was not occasioned or brought about by such individual acting alone or with other workers in concert; or

(b) He is not participating in or directly interested in the labor dispute which caused the stoppage of work; and

(c) He does not belong to a grade or class of workers of which, immediately before the commencement of stoppage, there were members employed at the premises at which the stoppage occurs, any of whom are participating in or directly interested in the dispute.

If in any case separate branches of work which are commonly conducted as separate businesses in separate premises are conducted in separate departments of the same premises, each such department shall, for the purposes of this subsection, be deemed to be a separate factory, establishment or other premises.

(5) For any week with respect to which he has received or is seeking unemployment compensation under an unemployment compensation law of another state or of the United States. However, if the appropriate agency of such other state or of the United States finally determines that he is not entitled to such unemployment compensation benefits, this disqualification shall not apply. Nothing in this subsection contained shall be construed to include within its terms any law of the United States providing unemployment compensation or allowances for honorably discharged members of the Armed Forces.

(6) For any week with respect to which he is receiving or has received remuneration in the form of payments under any governmental or private retirement or pension plan, system or policy which a base-period employer is maintaining or contributing to or has maintained or contributed to on behalf of the individual; however, if the amount payable with respect to any week is less than the benefits which would otherwise be due under Section 71-5-501, he shall be entitled to receive for such week, if otherwise eligible, benefits reduced by the amount of such remuneration. However, on or after the first Sunday immediately following July 1, 2001, no social security payments, to which the employee has made contributions, shall be deducted from unemployment benefits paid for any period of unemployment beginning on or after the first Sunday following July 1, 2001. This one hundred percent (100%) exclusion shall not apply to any other governmental or private retirement or pension plan, system or policy. If benefits payable under this section, after being reduced by the amount of such remuneration, are not a multiple of One Dollar ($1.00), they shall be adjusted to the next lower multiple of One Dollar ($1.00).

(7) For any week with respect to which he is receiving or has received remuneration in the form of a back pay award, or other compensation allocable to any week, whether by settlement or otherwise. Any benefits

previously paid for weeks of unemployment with respect to which back pay awards, or other such compensation, are made shall constitute an overpayment and such amounts shall be deducted from the award by the employer prior to payment to the employee, and shall be transmitted promptly to the department by the employer for application against the overpayment and credit to the claimant's maximum benefit amount and prompt deposit into the fund; however, the removal of any charges made against the employer as a result of such previously paid benefits shall be applied to the calendar year and the calendar quarter in which the overpayment is transmitted to the department, and no attempt shall be made to relate such a credit to the period to which the award applies. Any amount of overpayment so deducted by the employer and not transmitted to the department shall be subject to the same procedures for collection as is provided for contributions by Sections 71-5-363 through 71-5-381. Any amount of overpayment not deducted by the employer shall be established as an overpayment against the claimant and collected as provided above. It is the purpose of this paragraph to assure equity in the situations to which it applies, and it shall be construed accordingly.

B. Notwithstanding any other provision in this chapter, no otherwise eligible individual shall be denied benefits for any week because he is in training with the approval of the department; nor shall such individual be denied benefits with respect to any week in which he is in training with the approval of the department by reason of the application of provisions in Section 71-5-511, subsection (c), relating to availability for work, or the provisions of subsection A(3) of this section, relating to failure to apply for, or a refusal to accept, suitable work.

C. Notwithstanding any other provisions of this chapter, no otherwise eligible individual shall be denied benefits for any week because he or she is in training approved under Section 236(a)(1) of the Trade Act of 1974, nor shall such individual be denied benefits by reason of leaving work to enter such training, provided the work left is not suitable employment, or because of the application to any such week in training of provisions in this law (or any applicable federal unemployment compensation law), relating to availability for work, active search for work or refusal to accept work.

For purposes of this section, the term "suitable employment" means with respect to an individual, work of a substantially equal or higher skill level than the individual's past adversely affected employment (as defined for purposes of the Trade Act of 1974), and wages for such work at not less than eighty percent (80%) of the individual's average weekly wage as determined for the purposes of the Trade Act of 1974.

D. Notwithstanding any other provisions of this chapter, no otherwise eligible individual shall be denied benefits for any week in which they are engaged in the Self-Employment Assistance Program established in Section 71-5-545 by reason of the application of Section 71-5-511(c), relating to availability for work, or the provisions of subsection A(3) of this section, relating to failure to apply for, or a refusal to accept, suitable work.

E. Any individual who is receiving benefits may participate in an approved training program under the Mississippi Employment Security Law to gain skills that may lead to employment while continuing to receive benefits. Authorization for participation of a recipient of unemployment benefits in such a program must be granted by the department and continuation of participation must be certified weekly by the participant recipient. While participating in such program approved by the department, availability and work search requirements will be waived. No individual will be allowed to participate in this program for more than twelve (12) weeks in any benefit year. Such participation shall not be considered employment for any purposes and shall not accrue benefits or wage credits. Participation in this training program shall meet the definition set forth in the U.S. Fair Labor Standards Act.

HISTORY: Codes, 1942, § 7379; Laws, 1940, ch. 295; Laws, 1944, ch. 288, § 1; Laws, 1954, ch. 353, § 2; Laws, 1958, ch. 533, § 3; Laws, 1962, ch. 564, § 1; Laws, 1971, ch. 519, § 5; Laws, 1977, ch. 497, § 8; Laws, 1982, ch. 480, § 3; Laws, 1983, ch. 364, § 4; Laws, 1984, ch. 498, § 3; Laws, 1986, ch. 316, § 2; Laws, 1988, ch. 365; Laws, 1994, ch. 303, § 4; Laws, 1996, ch. 464, § 3; Laws, 2001, ch. 405, § 1; Laws, 2004, ch. 572, § 39; Laws, 2007, ch. 606, § 14; reenacted without change, Laws, 2008, 1st Ex Sess, ch. 30, § 39; reenacted without change, Laws, 2010, ch. 559, § 39; reenacted without change, Laws, 2011, ch. 471, § 40; reenacted and amended, Laws, 2012, ch. 515, § 40, eff from and after July 1, 2012; reenacted without change, Laws, 2019, ch. 451, § 39, eff from and after April 3, 2019.

Editor's Notes — Laws of 2004, ch. 572, § 60, as amended by Laws of 2008, 1st Ex Sess, ch. 30, § 58, as amended by Laws of 2010, ch. 559, § 58, as amended by Laws of 2011, ch. 471, § 59, as amended by Laws of 2012, ch. 515, § 58, as amended by Laws of 2019, ch. 451, § 58, and as amended by Laws of 2020, ch. 476, § 7, provides:

"SECTION 60. Sections 8 through 59 of this act shall stand repealed on July 1, 2023."

Amendment Notes — The 2012 amendment reenacted and amended the section by adding A.(3)(c); and adding D. and E.

The 2019 amendment, effective April 3, 2019, reenacted the section without change.

Federal Aspects— Fair Labor Standards Act generally, see 29 USCS §§ 201 et seq.

JUDICIAL DECISIONS

ANALYSIS

5. Leaving employment without good cause.
5.5. Leaving employment with good cause.
7. Misconduct discharge, generally.
8. —Held disqualification.
9. —Held not disqualification.

5. Leaving employment without good cause.

Denial of unemployment benefits to a claimant was appropriate because substantial evidence supported the decision as there was testimony that the claimant offered to resign the claimant's employment without good cause and that the employer's board accepted the claimant's resignation. Furthermore, the claimant did not overcome the rebuttable presumption in favor of the decision. Dailey v. Miss. Dep't of Empl. Sec., 271 So. 3d 715, 2018 Miss. App. LEXIS 617 (Miss. Ct. App. 2018).

There was substantial evidence to support the findings that the employee voluntarily left his employment for another job without good cause; his coworker's harassing incidents, while inappropriate, were all dealt with by supervisors to the employee's satisfaction, he was told by mental-health professionals to return to work and face his problems, and the re-

view board could well have determined that the employer was aware of the harassing incidents and addressed them. Alston v. Miss. Dep't of Empl. Sec., 247 So. 3d 303, 2017 Miss. App. LEXIS 653 (Miss. Ct. App. 2017), cert. denied, 246 So. 3d 884, 2018 Miss. LEXIS 261 (Miss. 2018), cert. denied, — U.S. —, 139 S. Ct. 1176, 203 L. Ed. 2d 215, 2019 U.S. LEXIS 1245 (U.S. 2019).

Claimant was disqualified from receiving unemployment benefits because the claimant left work voluntarily without good cause in that the claimant violated the employer's attendance policy, when the claimant failed to show up for work without notification for three consecutive days because the claimant was incarcerated. Moreover, the claimant failed to take steps to protect the claimant's job as the claimant, upon release, did not go to the employer or ask family members to relay the claimant's incarceration to the employer. Robinson v. Miss. Dep't of Empl. Sec., 200 So. 3d 482, 2016 Miss. App. LEXIS 304 (Miss. Ct. App. 2016), cert. denied, 207 So. 3d 1239, 2017 Miss. LEXIS 4 (Miss. 2017).

In denying unemployment benefits under Miss. Code Ann. § 71-5-513(A)(1)(a), the administrative law judge relied solely on an inapplicable employee handbook provision in concluding that the claimant voluntarily had quit. The claimant was not tardy, nor was he absent, and so the policy requiring the claimant to notify the employer within eight hours or be deemed to have quit voluntarily, did not apply. Jones v. Miss. Empl. Sec. Comm'n, 181 So. 3d 1001, 2016 Miss. LEXIS 1 (Miss. 2016).

Claimant was properly denied unemployment compensation benefits because the record showed the claimant had a reasonable assurance of returning to work for a school system in the next academic year but chose to leave the employment to relocate to another state for financial reasons. Thompson v. Armstrong Cork Co., 230 Miss. 730, 93 So. 2d 831, 1957 Miss. LEXIS 415 (Miss. 1957).

Substantial evidence supported the Mississippi Department of Employment Security Board of Review's denial of unemployment benefits to a staffing company's employee because the employee left an assignment to pursue another job opportunity that would allow him a better chance at permanent, full-time employment, he offered no argument of good cause on appeal, and no evidence of good cause appeared in the record. Thompson v. Miss. Dep't of Empl. Sec., 130 So. 3d 174, 2014 Miss. App. LEXIS 18 (Miss. Ct. App. 2014).

5.5. Leaving employment with good cause.

Circuit court erred in affirming the decision of the Mississippi Department of Employment Security, which denied an employee unemployment benefits, because substantial evidence showed the she did not voluntarily quit but was part of a reduction in force (RIF); the employee was led to believe she was part of the RIF once she turned in a letter and remained under that impression, which was confirmed by the school's payroll clerk after she filed for unemployment benefits. Gladney v. Miss. Dep't of Empl. Sec., 146 So. 3d 1036, 2014 Miss. App. LEXIS 488 (Miss. Ct. App. 2014).

Finding that the employee had voluntarily quit her job for good cause and was entitled to unemployment benefits was appropriate because she proved by substantial evidence that she had good cause to leave her employment with the firm, due to harassment, under Miss. Code Ann. § 71-5-513(A)(1)(c). Miss. Dep't of Empl. Sec. v. Trent L. Howell, PLLC, 46 So. 3d 827, 2010 Miss. App. LEXIS 567 (Miss. Ct. App. 2010).

7. Misconduct discharge, generally.

After the Mississippi Department of Employment Security (MDES) initially disqualified a former employee from unemployment benefits due to allegedly being discharged from employment for misconduct, it was not error for the Board of Review of the MDES to reverse that decision because the employer did not meet its burden to show the employee was discharged for misconduct, when the employer did not appear at a de novo hearing, as the employer had adequate notice of that hearing. Over The Rainbow Daycare v. Miss. Dep't of Empl. Sec., 188 So. 3d 1249, 2016 Miss. App. LEXIS 161 (Miss. Ct. App. 2016).

Employee was improperly denied unemployment benefits because her conduct did not amount to insubordination, her actions did not violate the employee handbook, her single incident of disrespectful behavior was not misconduct where there was no constant and continual direct order to do anything, and she was never warned that she would be fired. Gammage v. Miss. Dep't of Empl. Sec., 113 So. 3d 1294, 2013 Miss. App. LEXIS 293 (Miss. Ct. App. 2013).

8. —Held disqualification.

Denial of unemployment benefits to a claimant was appropriate because the claimant's deliberate action of going outside of the employer's store to the parking lot and engaging in a physical altercation with a customer constituted misconduct that disqualified the claimant from receiving unemployment benefits. The claimant's conduct was against the employer's workplace-violence policy and constituted a willful and wanton disregard for the employer's interests. Conner v. Miss. Dep't of Empl. Sec., 247 So. 3d 341, 2018 Miss. App. LEXIS 247 (Miss. Ct. App. 2018).

There was no reason to disturb the decision to deny unemployment benefits to the employee, as she exhibited misconduct; her supervisor testified that the employee was notorious for avoiding customers and she had previously refused to assist them and refused to follow instructions, plus since learning about cutbacks, the employee was rude, sullen and nonresponsive, which demonstrated a pattern of refusal to obey orders, constituting insubordination. Bounds v. Miss. Dep't of Empl. Sec., 271 So. 3d 634, 2018 Miss. App. LEXIS 576 (Miss. Ct. App. 2018).

Circuit court properly affirmed the denial of unemployment benefits by the Mississippi Department of Employment Security Board of Review to a former employee and denied and dismissed her appeal because the employee admitted that the record reflected deficiencies in her job performance and did not contest the right of the employer to terminate her, the employee admitted to management she knew how to perform her job tasks, and her repeated errors, taken as a whole, demonstrated a substantial disregard of the employer's interests or of the employee's duties and obligations to the employer as to constitute "misconduct." Windham v. Miss. Dep't of Empl. Sec., 207 So. 3d 1249, 2017 Miss. App. LEXIS 3 (Miss. Ct. App. 2017).

Circuit court properly affirmed the decision of the Board of Review of the Mississippi Department of Employment Security denying the former employee's claim for unemployment benefits as the Board found that he was disqualified from receiving benefits based on his misconduct because it was evident that the employee's racially charged comments amounted to an intentional disregard of the standards of behavior which his employer had the right to expect from him; and his conduct evidenced a complete disregard of his employer's interest. Kidd v. Miss. Dep't of Empl. Sec., 202 So. 3d 1283, 2016 Miss. App. LEXIS 381 (Miss. Ct. App. 2016).

Claimant was properly denied unemployment benefits as he was fired for willful misconduct because the claimant, the only security guard on duty at the hospital, failed to stop people from entering the emergency room (ER) and maintain control as the video footage of the incident revealed that the claimant failed to make any attempt to assist the victim, lock the ER doors, or restore order; he allowed several people into the ER, stayed in the security booth for several minutes, and did not assist the shooting victim; his actions directly violated the employer's procedure for locking down the ER when there was a gunshot victim; and he acted with willful and wanton disregard for the hospital's procedures and policies. Fisher v. Miss. Dep't of Empl. Sec., 176 So. 3d 141, 2015 Miss. App. LEXIS 509 (Miss. Ct. App. 2015).

Although appellant claimed that she did not have a broom and did not refuse to sweep her work area, it was the Board of Review's prerogative to believe the boss's testimony over appellant's in finding the company proved misconduct. Substantial evidence supported the Board's denial of unemployment benefits based on appellant's insubordination. Seago v. Miss. Dep't of Empl. Sec., 158 So. 3d 392, 2015 Miss. App. LEXIS 96 (Miss. Ct. App. 2015).

Circuit court properly affirmed a decision by the Department of Employment Security Board of Review denying an employee benefits because substantial evidence supported the Board's determination that the employee was discharged for misconduct where the employer had a three-day no call/no show policy and it was within the Board's authority to find the employer's testimony more credible and determine that the employee had three consecutive absences without giving notice in violation of the policy. Hemphill v. Miss. Dep't of Empl. Sec., 152 So. 3d 1226, 2014 Miss. App. LEXIS 724 (Miss. Ct. App. 2014).

Circuit court properly affirmed the denial of a school employee's request for unemployment benefits due to "disqualifying misconduct" because she had received three written warnings based on her repeated refusal or failure to follow directive given by her immediate supervisor or the school's principal, she did not cite any authority to support her argument that she was unjustly denied unemployment benefits, and there was substantial evidence in the record to support the finding of misconduct. Thomas v. Miss. Dep't, 151 So. 3d 233, 2014 Miss. App. LEXIS 622 (Miss. Ct. App. 2014).

Employee's application for unemployment benefits was properly denied because she was discharged due to the misconduct of her excessive tardiness and absences in violation of the employer's attendance policy where she was aware of the employer's attendance policy, her excessive tardies and absences were properly documented, she was given the warnings required under the policy, and she failed to adjust her work schedule to avoid being tardy. Anthony v. Miss. Dep't of Empl. Sec., 169 So. 3d 929, 2014 Miss. App. LEXIS 340 (Miss. Ct. App. 2014).

Claimant was ineligible to receive unemployment benefits because she was aware of her employer's attendance policy; her excessive tardies were properly documented, and she was given the warnings required under the policy; and the violation of the employer's attendance policy constituted misconduct. Gibson v. Miss. Dep't of Empl. Sec., 130 So. 3d 563, 2014 Miss. App. LEXIS 33 (Miss. Ct. App. 2014).

Court of appeals erred by reevaluating the evidence and substituting its judgment for that of the Mississippi Employment Security Commission (MESC) because the MESC's decision that an employer did not prove misconduct was supported by substantial evidence; the evidence substantially supported the MESC's conclusion that the employer did not prove that an employee falsified her time sheets, and it found evidence of the employee's inefficient use of technology, not falsification of hours worked. Jackson County Bd. of Supervisors v. Miss. Empl. Sec. Comm'n, 129 So. 3d 178, 2013 Miss. LEXIS 641 (Miss. 2013).

Substantial evidence showed that a former employee committed misconduct sufficient to warrant a reversal of an award of unemployment benefits because the owner of the employee's former employer and the employee's former sales manager testified, contrary to the employee's testimony, that the employee refused to retake a State of Mississippi mandatory licensing exam after the employee had failed a previous exam and that the employee continued to improperly complete paperwork and sales contracts after being warned to correct the employee's errors. Hunter v. Miss. Dep't of Empl. Sec., 120 So. 3d 435, 2013 Miss. App. LEXIS 265 (Miss. Ct. App. 2013).

Employee was properly disqualified from receiving unemployment benefits under Miss. Code Ann. § 71-5-513(A)(1)(b) because, while there was little evidence concerning the alleged customers' complaints, there was substantial evidence that the employee's insubordination in continuously refusing to meet with the employee's superiors to address business concerns constituted misconduct. Garrard v. Miss. Dep't of Empl. Sec., 111 So. 3d 687, 2013 Miss. App. LEXIS 152 (Miss. Ct. App. 2013).

Teacher was not entitled to receive unemployment benefits because the teacher's conduct of continuously and intentionally disobeying a directive from her supervisors amounted to misconduct under Miss. Code Ann. § 71-5-513(A)(1)(b), especially since the teacher was aware that she could be moved to a different facility and that her failure to report to a

new facility would jeopardize her employment. Buller v. Miss. Dep't of Empl. Sec., 111 So. 3d 1276, 2013 Miss. App. LEXIS 180 (Miss. Ct. App. 2013).

Substantial evidence under Miss. Code Ann. 71-5-531 supported the denial of unemployment benefits to a claimant as her actions constituted misconduct under Miss. Code Ann § 71-5-513 as she was terminated for insubordination where: (1) she shut down her machine without supervisor approval and refused to sign the written warning detailing her actions; (2) she was loud and argumentative during the write-up and when she arrived to pick up her paycheck; and (3) she showed up to work two hours prior to the time she was instructed. Lee v. Miss. Empl. Sec. Comm'n, 105 So. 3d 1156, 2012 Miss. App. LEXIS 804 (Miss. Ct. App. 2012).

Unemployment benefits claimant was terminated for misconduct under Miss. Code Ann. § 71-5-513(A)(1)(b) and was properly denied benefits where: (1) he failed to properly spot a lift or to sound an alarm to warn that a lift was in danger of colliding with an airplane; (2) the claimant left his assigned station at the time of the collision, and had he remained at his station, he would have observed the lift in time to warn the lift operator; and (3) the claimant was terminated for violating and not following proper safety procedures, causing aircraft damage. Williams v. Miss. Dep't of Empl. Sec., 99 So. 3d 258, 2012 Miss. App. LEXIS 613 (Miss. Ct. App. 2012).

Substantial evidence supported denial of unemployment benefits to a former employee based on misconduct by the employee where there was evidence that the employee accused a customer of racism, the employee refused to apologize to the customer, and the employee gave false statements to her employer during an investigation of the customer's complaint against the employee. Patterson v. Miss. Dep't of Empl. Sec., 95 So. 3d 719, 2012 Miss. App. LEXIS 482 (Miss. Ct. App. 2012).

9. —Held not disqualification.

Because the Mississippi Department of Employment Security's Board of Review supported its decision that a terminated employee was not disqualified from receiving unemployment benefits for misconduct with substantial evidence—the employee's testimony that the employee had not intentionally lied to supervisors, that the employee brought home company information only to protect the information and to complete work, and that the employee's personal internet use was neither unusual or concerning—the decision was neither arbitrary, nor capricious. Columbus Light & Water Dep't v. Miss. Dep't of Empl. Sec., 281 So. 3d 920, 2019 Miss. App. LEXIS 105 (Miss. Ct. App. 2019).

Award of unemployment benefits to a former county employee was appropriate, when the county contended that the employee was ineligible for unemployment benefits because of alleged misconduct, because the Mississippi Department of Employment Security Board of Review did not act arbitrarily in finding that the county failed to meet its burden of proof by clear and convincing evidence and the administrative law judge's interest in recent, rather than remote, complaints or warnings about the employee's performance was not arbitrary or capricious. Jackson Cnty. v. Miss. Dep't of Empl. Sec., 193 So. 3d 683, 2016 Miss. App. LEXIS 378 (Miss. Ct. App. 2016).

Circuit court erred in reversing an award of unemployment benefits to a female corrections officer because the employee's conduct was not willful, wanton, or equally culpable where neither the ALJ nor the Board of Review found that she had committed misconduct, she never wore a skirt to work after her supervisor told her she could not, and the employee manual expressly allowed other department employees to wear skirts and contained a nondiscrimination policy that the employee thought applied to her situation. Finnie v. Lee Cnty. Bd. of Supervisors, 186 So. 3d 831, 2016 Miss. LEXIS 105 (Miss. 2016).

Applicant was not disqualified from receiving unemployment benefits because an employer did not prove that she committed disqualifying misconduct due to low productivity; mere inefficiency did to amount to misconduct, and the employee testified that she worked to the best of her ability and that factors outside of her

control contributed to her missing quotas. Also, there was no showing that the employee violated a uniformly enforced rule. Franklin Collection Serv. v. Miss. Dep't of Empl. Sec., 181 So. 3d 304, 2015 Miss. App. LEXIS 671 (Miss. Ct. App. 2015).

Circuit court erred in affirming the denial of an employee's request for unemployment benefits because the decision was not supported by substantial evidence where the employee was no more insubordinate than her coworkers, the evidence did not arise to a wilful and wanton disregard for the employer's interest, and the employee's conduct during the one incident in the record was not the equivalent of a constant or continuing intentional refusal to obey a direct or implied order. Johnson v. Miss. Dep't of Empl. Sec., 150 So. 3d 149, 2014 Miss. App. LEXIS 626 (Miss. Ct. App. 2014).

RESEARCH REFERENCES

ALR.

Conduct or Activities of Employees During Off-Duty Hours as Misconduct Barring Unemployment Compensation Benefits. 18 A.L.R. 6th 195.

Eligibility for Unemployment Compensation as Affected by Voluntary Resignation Because of Change of Location of Residence Under Statute Conditioning Benefits upon Leaving for "Good Cause," "Just Cause," or Cause of "Necessitous and Compelling Nature." 25 A.L.R. 6th 101.

Eligibility for Compensation as Affected by Voluntary Resignation Because of Change of Location of Residence Under Statute Conditioning Benefits upon Leaving for "Good Cause Attributable to the Employer". 25 A.L.R. 6th 111.

Eligibility for Unemployment Compensation as Affected by Voluntary Resignation Because of Change of Location of Residence Under Statute Denying Benefits to Certain Claimants Based on Particular Disqualifying Motive for Move or Unavailability for. 27 A.L.R. 6th 123.

§ 71-5-517. Initial determination [Repealed effective July 1, 2023].

HISTORY: Codes, 1942, § 7381; Laws, 1940, ch. 295; Laws, 1958, ch. 533, § 4b; Laws, 1964, ch. 442, § 1b; Laws, 1972, ch. 375, § 1; Laws, 1977, ch. 352; Laws, 1986, ch. 316, § 3; Laws, 2004, ch. 572, § 40; Laws, 2007, ch. 606, § 15; reenacted without change, Laws, 2008, 1st Ex Sess, ch. 30, § 40; reenacted without change, Laws, 2010, ch. 559, § 40; reenacted without change, Laws, 2011, ch. 471, § 41; reenacted without change, Laws, 2012, ch. 515, § 41, eff from and after July 1, 2012; reenacted without change, Laws, 2019, ch. 451 ,§ 40, eff from and after April 3, 2019.

Editor's Notes — Laws of 2004, ch. 572, § 60, as amended by Laws of 2008, 1st Ex Sess, ch. 30, § 58, as amended by Laws of 2010, ch. 559, § 58, as amended by Laws of 2011, ch. 471, § 59, as amended by Laws of 2012, ch. 515, § 58, as amended by Laws of 2019, ch. 451, § 58, and as amended by Laws of 2020, ch. 476, § 7, provides:

"SECTION 60. Sections 8 through 59 of this act shall stand repealed on July 1, 2023."

This section was reenacted without change by Laws of 2019, ch. 451, § 40, effective from and after April 3, 2019. Since the language of the section as it appears in the main volume is unaffected by the reenactment, it is not reprinted in this supplement.

Amendment Notes — The 2012 amendment reenacted the section without change.

The 2019 amendment, effective April 3, 2019, reenacted the section without change.

JUDICIAL DECISIONS

2. Late notice of appeal.

Former employer waived the issue of the untimeliness of a claimant's appeal from the initial determination because the employer did not raise the issue at the hearing before the administrative law judge, or in its appeal to the board of review, but, instead, the issue was first raised on appeal before the circuit court. Moreover, the administrative law judge's determination that the appeal was to be heard on the merits was not an abuse of discretion. Woodland Vill. Nursing Ctr., LLC v. Miss. Dep't of Empl. Sec., 138 So. 3d 946, 2013 Miss. App. LEXIS 724 (Miss. Ct. App. 2013), cert. denied, 139 So. 3d 74, 2014 Miss. LEXIS 252 (Miss. 2014).

3. —Failure to show good cause.

Employee was not entitled to unemployment benefits because her appeal was not timely filed, and the record did not present any set of facts that would support a showing of good cause to excuse her untimely filing where, when asked why she did not file the appeal in a timely manner, the employee simply stated that she had other things going on and that she thought her claim would be denied anyway. Jackson v. Miss. Dep't of Empl. Sec., 121 So. 3d 298, 2013 Miss. App. LEXIS 567 (Miss. Ct. App. 2013).

§ 71-5-519. Appeals [Repealed effective July 1, 2023].

HISTORY: Codes, 1942, § 7382; Laws, 1940, ch. 295; Laws, 1958, ch. 533, § 4c; Laws, 1964, ch. 442, § 1c; Laws, 1977, ch. 448; Laws, 2004, ch. 572, § 41; Laws, 2007, ch. 606, § 16; reenacted without change, Laws, 2008, 1st Ex Sess, ch. 30, § 41; reenacted without change, Laws, 2010, ch. 559, § 41; reenacted without change, Laws, 2011, ch. 471, § 42; reenacted without change, Laws, 2012, ch. 515, § 42, eff from and after July 1, 2012; reenacted without change, Laws, 2019, ch. 451, § 41, eff from and after April 3, 2019.

Editor's Notes — Laws of 2004, ch. 572, § 60, as amended by Laws of 2008, 1st Ex Sess, ch. 30, § 58, as amended by Laws of 2010, ch. 559, § 58, as amended by Laws of 2011, ch. 471, § 59, as amended by Laws of 2012, ch. 515, § 58, as amended by Laws of 2019, ch. 451, § 58, and as amended by Laws of 2020, ch. 476, § 7, provides:

"SECTION 60. Sections 8 through 59 of this act shall stand repealed on July 1, 2023."

This section was reenacted without change by Laws of 2019, ch. 451, § 41, effective from and after April 3, 2019. Since the language of the section as it appears in the main volume is unaffected by the reenactment, it is not reprinted in this supplement.

Amendment Notes — The 2012 amendment reenacted the section without change.

The 2019 amendment, effective April 3, 2019, reenacted the section without change.

JUDICIAL DECISIONS

ANALYSIS

1. In general.
2. Delivery.

1. In general.

It was error to reverse a decision of the Mississippi Department of Economic Security Board of Review dismissing a claimant's appeal from the decision of an administrative law judge because (1) the appeal was filed after the statutory deadline, and (2) the claimant showed no good cause for the delay. Miss. Dep't of Empl. Sec. v. Matthews, 203 So. 3d 46, 2016 Miss. App. LEXIS 684 (Miss. Ct. App. 2016).

2. Delivery.

Record established that an applicant's appeal of the denial of benefits was untimely where the appeal was stamped as received four days after the deadline, and

the applicant's assertion that the Mississippi Department of Employment Security's records were unreliable was wholly unsupported by the record. Onyia v. Miss. Empl. Sec. Comm'n, 98 So. 3d 1136, 2012 Miss. App. LEXIS 617 (Miss. Ct. App. 2012).

§ 71-5-523. Board of review [Repealed effective July 1, 2023].

HISTORY: Codes, 1942, § 7384; Laws, 1940, ch. 295; Laws, 1958, ch. 533, § 4e; Laws, 1964, ch. 442, § 1e; Laws, 2004, ch. 572, § 42; reenacted without change, Laws, 2008, 1st Ex Sess, ch. 30, § 42; reenacted without change, Laws, 2010, ch. 559, § 42; reenacted without change, Laws, 2011, ch. 471, § 43; reenacted without change, Laws, 2012, ch. 515, § 43, eff from and after July 1, 2012; reenacted without change, Laws, 2019, ch. 451, § 42, eff from and after April 3, 2019.

Editor's Notes — Laws of 2004, ch. 572, § 60, as amended by Laws of 2008, 1st Ex Sess, ch. 30, § 58, as amended by Laws of 2010, ch. 559, § 58, as amended by Laws of 2011, ch. 471, § 59, as amended by Laws of 2012, ch. 515, § 58, as amended by Laws of 2019, ch. 451, § 58, and as amended by Laws of 2020, ch. 476, § 7, provides:

"SECTION 60. Sections 8 through 59 of this act shall stand repealed on July 1, 2023."

This section was reenacted without change by Laws of 2019, ch. 451, § 42, effective from and after April 3, 2019. Since the language of the section as it appears in the main volume is unaffected by the reenactment, it is not reprinted in this supplement.

Amendment Notes — The 2012 amendment reenacted the section without change.

The 2019 amendment, effective April 3, 2019, reenacted the section without change.

§ 71-5-525. Procedure [Repealed effective July 1, 2023].

HISTORY: Codes, 1942, § 7385; Laws, 1940, ch. 295; Laws, 1958, ch. 533, § 4f; Laws, 1964, ch. 442, § 1f; Laws, 2004, ch. 572, § 43; reenacted without change, Laws, 2008, 1st Ex Sess, ch. 30, § 43; reenacted without change, Laws, 2010, ch. 559, § 43; reenacted without change, Laws, 2011, ch. 471, § 44; reenacted without change, Laws, 2012, ch. 515, § 44, eff from and after July 1, 2012; reenacted without change, Laws, 2019, ch. 451, § 43, eff from and after April 3, 2019.

Editor's Notes — Laws of 2004, ch. 572, § 60, as amended by Laws of 2008, 1st Ex Sess, ch. 30, § 58, as amended by Laws of 2010, ch. 559, § 58, as amended by Laws of 2011, ch. 471, § 59, as amended by Laws of 2012, ch. 515, § 58, as amended by Laws of 2019, ch. 451, § 58, and as amended by Laws of 2020, ch. 476, § 7, provides:

"SECTION 60. Sections 8 through 59 of this act shall stand repealed on July 1, 2023."

This section was reenacted without change by Laws of 2019, ch. 451, § 43, effective from and after April 3, 2019. Since the language of the section as it appears in the main volume is unaffected by the reenactment, it is not reprinted in this supplement.

Amendment Notes — The 2012 amendment reenacted without change.

The 2019 amendment, effective April 3, 2019, reenacted the section without change.

§ 71-5-529. Appeal to courts [Repealed effective July 1, 2023].

HISTORY: Codes, 1942, § 7387; Laws, 1940, ch. 295; Laws, 1958, ch. 533, § 4h; Laws, 1964, ch. 442, § 1h; Laws, 2004, ch. 572, § 44; Laws, 2007, ch. 606, § 17; reenacted without change, Laws, 2008, 1st Ex Sess, ch. 30, § 44; reenacted without change, Laws, 2010, ch. 559, § 44; reenacted without change, Laws, 2011, ch. 471, § 45,; reenacted without change, Laws, 2012, ch. 515, § 45, eff

from and after July 1, 2012; reenacted without change, Laws, 2019, ch. 451, § 44, eff from and after April 3, 2019.

Editor's Notes — Laws of 2004, ch. 572, § 60, as amended by Laws of 2008, 1st Ex Sess, ch. 30, § 58, as amended by Laws of 2010, ch. 559, § 58, as amended by Laws of 2011, ch. 471, § 59, as amended by Laws of 2012, ch. 515, § 58, as amended by Laws of 2019, ch. 451, § 58, and as amended by Laws of 2020, ch. 476, § 7, provides:

"SECTION 60. Sections 8 through 59 of this act shall stand repealed on July 1, 2023."

This section was reenacted without change by Laws of 2019, ch. 451, § 44, effective from and after April 3, 2019. Since the language of the section as it appears in the main volume is unaffected by the reenactment, it is not reprinted in this supplement.

Amendment Notes — The 2012 amendment reenacted the section without change.

The 2019 amendment, effective April 3, 2019, reenacted the section without change.

JUDICIAL DECISIONS

2. Untimely appeal: dismissal appropriate.

Appellant had 20 days from the date of March 28, 2014 to appeal to the circuit court, but she filed her appeal on August 18, 2014, over four months late; the copy of the decision dated March 28, with the line stating "date mailed March 28," and resent to appellant on July 29, was admissible evidence of mailing under the business-records hearsay exception, and as appellant offered no proof of good cause other than her own statement that she never received the March 28 decision, which was not enough, her appeal was properly dismissed as untimely. Smith v. Miss. Dep't of Empl. Sec., 212 So. 3d 860, 2016 Miss. App. LEXIS 33 (Miss. Ct. App. 2016).

Former employee's appeal from the Mississippi Department of Employment Security Board of Review's decision to deny the employee unemployment benefits was dismissed because the employee filed the appeal one day too late, pursuant to Miss. Code Ann. §§ 71-5-529 and 71-5-531, and the employee presented insufficient evidence of good cause to expand the statutory deadline for the filing of the appeal. Keyes v. Miss. Dep't of Empl. Sec., 95 So. 3d 757, 2012 Miss. App. LEXIS 502 (Miss. Ct. App. 2012).

§ 71-5-531. Court review [Repealed effective July 1, 2023].

HISTORY: Codes, 1942, § 7388; Laws, 1940, ch. 295; Laws, 1958, ch. 533, § 4i; Laws, 1964, ch. 442, § li; Laws, 1996, ch. 464, § 4; Laws, 2004, ch. 572, § 45; reenacted without change, Laws, 2008, 1st Ex Sess, ch. 30, § 45; reenacted without change, Laws, 2010, ch. 559, § 45; reenacted without change, Laws, 2011, ch. 471, § 46; reenacted without change, Laws, 2012, ch. 515, § 46, eff from and after July 1, 2012; reenacted without change, Laws, 2019, ch. 451, § 45, eff from and after April 3, 2019.

Editor's Notes — Laws of 2004, ch. 572, § 60, as amended by Laws of 2008, 1st Ex Sess, ch. 30, § 58, as amended by Laws of 2010, ch. 559, § 58, as amended by Laws of 2011, ch. 471, § 59, as amended by Laws of 2012, ch. 515, § 58, as amended by Laws of 2019, ch. 451, § 58, and as amended by Laws of 2020, ch. 476, § 7, provides:

"SECTION 60. Sections 8 through 59 of this act shall stand repealed on July 1, 2023."

This section was reenacted without change by Laws of 2019, ch. 451, § 45, effective from and after April 3, 2019. Since the language of the section as it appears in the main volume is unaffected by the reenactment, it is not reprinted in this supplement.

Amendment Notes — The 2012 amendment reenacted the section without change.

The 2019 amendment, effective April 3, 2019, reenacted the section without change.

JUDICIAL DECISIONS

ANALYSIS

1. In general.
4. Review of findings of fact.
5. Review of the denial of benefits.
6. Time limitations.

1. In general.

Applicant was entitled to unemployment benefits upon termination from employment because substantial evidence was not presented below to support a finding that when filling out an employment application the applicant acted in such willful or wanton disregard of the employer's interest that disqualification of unemployment benefits was warranted, as the applicant did not, when applying for a job, intentionally misrepresent whether the employee had ever previously filed a workers' compensation claim or been injured on the job. Bedford Care Ctr. of Marion, LLC v. Nicholson, 218 So. 3d 1176, 2017 Miss. App. LEXIS 38 (Miss. Ct. App. 2017).

Record failed to support the conclusion of the Mississippi Department of Employment Security that a worker constituted an employee under Miss. Code Ann. § 71-5-11(J)(14) because the worker constituted an independent contractor; the worker set his own hours and received a commission, not an hourly wage, and the employer failed to exercise control, nor did it possess a right of control, over the details of the actual sales work at issue. College Network v. Miss. Dep't of Empl. Sec., 114 So. 3d 740, 2013 Miss. App. LEXIS 179 (Miss. Ct. App. 2013).

4. Review of findings of fact.

Because the Mississippi Department of Employment Security's Board of Review supported its decision that a terminated employee was not disqualified from receiving unemployment benefits for misconduct with substantial evidence—the employee's testimony that the employee had not intentionally lied to supervisors, that the employee brought home company information only to protect the information and to complete work, and that the employee's personal internet use was neither unusual or concerning—the decision was neither arbitrary, nor capricious. Columbus Light & Water Dep't v. Miss. Dep't of Empl. Sec., 281 So. 3d 920, 2019 Miss. App. LEXIS 105 (Miss. Ct. App. 2019).

Administrative law judge found that the employer failed to prove that the employee's actions were misconduct, and the Board of Review's decision was not made in a whimsical manner and the judgment was not arbitrary or capricious, and was instead supported by substantial evidence. Franklin Collection Serv. v. Miss. Dep't of Empl. Sec., 184 So. 3d 330, 2016 Miss. App. LEXIS 19 (Miss. Ct. App. 2016).

Although company policy called for automatic termination, the employer offered no proof that the employee deliberately misrepresented a processing fee, and while the company had ample reason to terminate the employee, a termination for cause does not necessarily require that unemployment benefits be denied; the administrative law judge (ALJ) found that the cited reason for termination did not amount to the requisite misconduct to preclude benefits, the Board of Review adopted the findings of the ALJ, and the findings were supported by substantial evidence and were conclusive. Franklin Collection Serv. v. Miss. Dep't of Empl. Sec., 184 So. 3d 330, 2016 Miss. App. LEXIS 19 (Miss. Ct. App. 2016).

Appellate court was precluded from taking any new evidence regarding the reliability of Mississippi Department of Employment Security's records as there was no evidence of fraud in the findings made by a review board regarding the timeliness of an applicant's appeal of the denial of benefits; rather, the evidence in the record established that the applicant's appeal was in fact untimely. Onyia v. Miss. Empl. Sec. Comm'n, 98 So. 3d 1136, 2012 Miss. App. LEXIS 617 (Miss. Ct. App. 2012).

5. Review of the denial of benefits.

Circuit court properly affirmed the decision of the Board of Review of the Mississippi Department of Employment Security denying the former employee's claim

for unemployment benefits as the Board found that he was disqualified from receiving benefits based on his misconduct because it was evident that the employee's racially charged comments amounted to an intentional disregard of the standards of behavior which his employer had the right to expect from him; and his conduct evidenced a complete disregard of his employer's interest. Kidd v. Miss. Dep't of Empl. Sec., 202 So. 3d 1283, 2016 Miss. App. LEXIS 381 (Miss. Ct. App. 2016).

Court of appeals erred by reevaluating the evidence and substituting its judgment for that of the Mississippi Employment Security Commission (MESC) because the MESC's decision that an employer did not prove misconduct was supported by substantial evidence; the evidence substantially supported the MESC's conclusion that the employer did not prove that an employee falsified her time sheets, and it found evidence of the employee's inefficient use of technology, not falsification of hours worked. Jackson County Bd. of Supervisors v. Miss. Empl. Sec. Comm'n, 129 So. 3d 178, 2013 Miss. LEXIS 641 (Miss. 2013).

Substantial evidence under Miss. Code Ann. 71-5-531 supported the denial of unemployment benefits to a claimant as her actions constituted misconduct under Miss. Code Ann § 71-5-513 as she was terminated for insubordination where: (1) she shut down her machine without supervisor approval and refused to sign the written warning detailing her actions; (2) she was loud and argumentative during the write-up and when she arrived to pick up her paycheck; and (3) she showed up to work two hours prior to the time she was instructed. Lee v. Miss. Empl. Sec. Comm'n, 105 So. 3d 1156, 2012 Miss. App. LEXIS 804 (Miss. Ct. App. 2012).

6. Time limitations.

Appellant had 20 days from the date of March 28, 2014 to appeal to the circuit court, but she filed her appeal on August 18, 2014, over four months late; the copy of the decision dated March 28, with the line stating "date mailed March 28," and resent to appellant on July 29, was admissible evidence of mailing under the business-records hearsay exception, and as appellant offered no proof of good cause other than her own statement that she never received the March 28 decision, which was not enough, her appeal was properly dismissed as untimely. Smith v. Miss. Dep't of Empl. Sec., 212 So. 3d 860, 2016 Miss. App. LEXIS 33 (Miss. Ct. App. 2016).

Former employee's appeal from the Mississippi Department of Employment Security Board of Review's decision to deny the employee unemployment benefits was dismissed because the employee filed the appeal one day too late, pursuant to Miss. Code Ann. §§ 71-5-529 and 71-5-531, and the employee presented insufficient evidence of good cause to expand the statutory deadline for the filing of the appeal. Keyes v. Miss. Dep't of Empl. Sec., 95 So. 3d 757, 2012 Miss. App. LEXIS 502 (Miss. Ct. App. 2012).

§ 71-5-541. Construction [Repealed effective July 1, 2023].

HISTORY: Codes, 1942, § 7389.5; Laws, 1971, ch. 519, § 15; Laws, 1977, ch. 497, § 9; Laws, 1981, ch. 466, § 2; Laws, 1982, ch. 480, § 6; Laws, 1983, ch. 364, § 5; Laws, 1984, ch. 498, § 4; Laws, 1986, ch. 316, § 4; Laws, 1986, ch. 335; Laws, 1993, ch. 329, § 1; Laws, 2004, ch. 572, § 46; reenacted without change, Laws, 2008, 1st Ex Sess, ch. 30, § 46; reenacted without change, Laws, 2010, ch. 559, § 46; reenacted without change, Laws, 2011, ch. 471, § 47; reenacted without change, Laws, 2012, ch. 515, § 47, eff from and after July 1, 2012; reenacted without change, Laws, 2019, ch. 451, § 46, eff from and after April 3, 2019.

Editor's Notes — Laws of 2004, ch. 572, § 60, as amended by Laws of 2008, 1st Ex Sess, ch. 30, § 58, as amended by Laws of 2010, ch. 559, § 58, as amended by Laws of 2011, ch. 471, § 59, as amended by Laws of 2012, ch. 515, § 58, as amended by Laws of 2019, ch. 451, § 58, and as amended by Laws of 2020, ch. 476, § 7, provides:

"SECTION 60. Sections 8 through 59 of this act shall stand repealed on July 1, 2023."

This section was reenacted without change by Laws of 2019, ch. 451, § 46, effective from and after April 3, 2019. Since the language of the section as it appears in the main volume is unaffected by the reenactment, it is not reprinted in this supplement.

Amendment Notes — The 2012 amendment reenacted without change.

The 2019 amendment, effective April 3, 2019, reenacted the section without change.

§ 71-5-545. Self-Employment Assistance Program.

(1) **Definitions.** As used in this section:

(a) "Self-employment assistance activities" means activities (including entrepreneurial training, business counseling, technical assistance and any other requirements set forth by the executive director in regulation) approved by the executive director in which an individual, identified through an established system consistent with the system requirements of Section 303(j)(1)(A) of the Social Security Act (SSA) as likely to exhaust regular unemployment benefits, participates for the purpose of establishing a business and becoming self-employed.

(b) "Self-employment assistance allowance" means an allowance, payable in lieu of, and on the same schedule as, regular benefits and from the unemployment fund established under Section 71-5-451, to an individual participating in self-employment assistance activities who meets the requirements of this section.

(c) "Regular benefits" means benefits payable to an individual under this chapter (including benefits payable to Federal civilian employees and to ex-service members pursuant to 5 USC Chapter 85) excluding emergency unemployment benefits and extended benefits.

(d) "Full-time basis" shall have the meaning contained in regulations prescribed by the executive director who has authority to set, modify and rescind such regulations as are required for the proper and efficient administration of this section.

(e) "SEAP" means the Self-Employment Assistance Program.

(2) **Amount of self-employment assistance allowance.** The weekly allowance payable under this section to an individual shall be equal to the weekly benefit amount for regular benefits otherwise payable under Section 71-5-503.

The sum of (a) the allowance paid under this section, and (b) regular benefits paid under this chapter with respect to any benefit year shall not exceed the maximum benefit amount as established by Section 71-5-507 with respect to such benefit year.

(3) **Eligibility for self-employment assistance allowance.** The allowance described in subsection (1) of this section shall be payable to an individual at the same interval, on the same terms, and subject to the same conditions as regular benefits under this chapter, except that:

(a) The requirements of Sections 71-5-511 and 71-5-513 relating to availability for work, active search for work, and refusal to accept work are not applicable to an individual while engaged in establishment of a business;

(b) The requirements of Section 71-5-505 relating to other earnings are

not applicable to income earned from self-employment by such individual while engaged in establishment of a business;

(c) An individual who meets the requirements of this section shall be considered to be unemployed under Section 71-5-501 et seq.; and

(d) An individual who fails to participate in self-employment assistance activities as prescribed by this section or by the executive director, or who fails to actively engage on a full-time basis in activities (which may include training) relating to the establishment of a business and becoming self-employed, shall be disqualified for any week in which the failure occurs.

(4) **Limitation on receipt of self-employment assistance allowances.** The aggregate number of individuals receiving the allowance under this section at any time shall not exceed five percent (5%) of the number of individuals receiving regular benefits as defined in Section 71-5-541.

(5) **Steering committee membership.** The executive director shall appoint a steering committee. Each member of the steering committee shall have equal voting rights on the SEAP Steering Committee. The voting members of the board who are not state employees or state elected officials shall be entitled to reimbursement of their reasonable expenses incurred in carrying out their duties under this chapter, from any funds available for that purpose.

(6) **Steering committee purpose.** The steering committee shall initially adopt the rules of operation for the SEAP and shall select and certify SEAP training programs. The rules shall be enforced by the department. Rules shall include the continuing role of the steering committee. Participants in training programs that are not certified by the SEAP shall not be paid SEAP benefits and any benefits paid to them shall be considered overpaid and shall be due to be repaid to the department and the Unemployment Trust Fund.

(7) **Rules and regulations for operation of SEAP by the Mississippi Department of Employment Security.** The executive director shall cause regulations adopted by the SEAP Steering Committee to be adopted by the department and the executive director may adopt other regulations as necessary for proper administration of this section.

(8) **Financing costs of self-employment assistance allowances.** Allowances paid under this section shall not be charged to employers as provided under provisions of this chapter relating to the noncharging of regular benefits as defined in Section 71-5-541, and shall be used in the computation of the annual unemployment tax rate as noncharges for receipt of unemployment benefits paid by this chapter. Noncharging provisions do not apply to unemployment compensation for federal employees, unemployment compensation for ex-servicemen or unemployment compensation paid to individuals based upon their wages earned with reimbursing employers, except as allowed by Section 71-5-357(b)(iv). In the event federal regulations allow changes to noncharging provisions associated with the SEAP, regulations may be adopted by the SEAP Steering Committee to make such changes as are reasonable and appropriate to the Mississippi program and charging or not charging of SEAP benefits.

(9) **Federal law and regulations. — Federal law and regulations.** Nothing in this section or the rules adopted related to this section or any other provision of this chapter is intended to be inconsistent with laws and regulations prescribed by the United States Department of Labor. Any part of this section or this chapter that is determined to not be in conformity with United State Department of labor regulations and applicable federal laws will not be enforced until such time as the deficiencies can be remedied.

(10) **Effective date and termination date.** The provisions of this section will apply to weeks beginning on or after the first Sunday sixty (60) days following passage, or after any plan required by the United States Department of Labor is approved by such department, whichever date is later. The authority provided by this section shall terminate as of the end of the week preceding the date when federal law no longer authorizes the provisions of this section, unless such date is a Saturday in which case the authority shall terminate as of such date.

HISTORY: Laws, 2012, ch. 515, § 59, eff from and after July 1, 2012.

Federal Aspects— Chapter 85 of Title 5 of the US Code relates to unemployment compensation and is codified as 5 USCS §§ 8501 et seq. Section 303(j)(1)(A) of the Social Security Act is codified as 42 USCS § 503(j)(1)(A).

CHAPTER 7.

DRUG AND ALCOHOL TESTING OF EMPLOYEES

Sec.
71-7-5. Conduct of testing generally; authorized types of tests.

§ 71-7-5. Conduct of testing generally; authorized types of tests.

(1) Except as otherwise provided in Section 71-7-27, all drug and alcohol testing conducted by employers shall be in conformity with the standards established in this section, other applicable provisions of this chapter, and all applicable regulations promulgated pursuant to this chapter.

(2) An employer is authorized to conduct the following types of drug and alcohol tests:

(a) Employers may require job applicants to submit to a drug and alcohol test as a condition of the employment application and may use a refusal to submit to a test or positive confirmed test result as a basis for refusal to hire.

(b) An employer may require all employees to submit to reasonable suspicion drug and alcohol testing. There is created a rebuttable presumption that the employer had reasonable suspicion to test for drugs if the specimen provided by the employee tested positive for drugs in a confirmatory drug test.

(c) An employer may require all employees to submit to neutral selection drug and alcohol testing pursuant to Section 71-7-9.

(d) An employer may administer drug and alcohol testing or require that the employee submit himself to drug and alcohol testing as provided under Section 71-3-121 in the event that the employee sustains an injury at work or asserts a work-related injury.

HISTORY: Laws, 1991, ch. 610, § 3; reenacted and codified, Laws, 1994, ch. 323, § 3; Laws, 2012, ch. 522, § 9, eff from and after July 1, 2012.

Editor's Notes — Laws of 2012, ch. 522, §§ 10 and 11, provide:

"SECTION 10. The Workers' Compensation Commission shall promulgate a written statement specifying the changes made to the Workers' Compensation Law by this act to every employer in this state subject to the Workers' Compensation Law. Within ten (10) days of receipt of this written statement from the Commission, every employer shall post the Commission's statement in a conspicuous place or places in and about his place or places of business and adjacent to the Notice of Coverage as required by Section 71-3-81.

"SECTION 11. This act shall take effect and be in force from and after July 1, 2012, and shall apply to injuries occurring on or after July 1, 2012."

Amendment Notes — The 2012 amendment added (2)(d).

§ 71-7-25. Limitation period for civil actions for violations of chapter; relief available; effect of compliance with chapter by employer; presumption as to validity of test results; actions for defamation, etc.

JUDICIAL DECISIONS

1. In general.

In an employment case in which a former employer filed a Fed. R. Civ. P. 12(b)(6) motion to dismiss, any claim by a pro se former employee brought under Miss. Code Ann. § 71-7-1 et seq., was barred by the statute of limitations in Miss. Code Ann. § 71-7-25(1). De Graffenried v. Smithway Motor Xpress, Inc., — F. Supp. 3d —, 2014 U.S. Dist. LEXIS 176075 (N.D. Miss. Dec. 22, 2014).

CHAPTER 13.

PROHIBITION AGAINST EMPLOYER INTIMIDATION ACT

Sec.

71-13-1. Short title.
71-13-3. Legislative findings.
71-13-5. Prohibition against unlawfully intimidating business or employee or representative of a business to obtain something of value; prohibition against conspiring to disrupt lawful commerce in places of business.
71-13-7. Prohibition against intentionally or recklessly damaging business property of another under certain circumstances; aiding and abetting the intentional or reckless damaging of business property of another.
71-13-9. Relation to First Amendment.
71-13-11. Award of damages in civil action under provisions of this chapter under certain circumstances.

§ 71-13-1. Short title.

This chapter shall be known and cited as the "Prohibition Against Employer Intimidation Act."

HISTORY: Laws, 2014, ch. 497, § 1, eff from and after July 1, 2014.

§ 71-13-3. Legislative findings.

The State of Mississippi is a right to work state and the state's right to work laws are founded on the basic principle that every individual has an inherent right to choose if they want to join a union or an employee organization, and this right to choose should not impact their employment. The State of Mississippi recognizes the importance and necessity of fostering economic development and job creation. Intimidation and coercion against any business, can make the state an unwelcoming and dangerous place for new business and job growth. Intimidation, extortion, and coercion are illegal and present a substantial risk to public safety and the well-being of the state's citizens, workers and businesses; and certain limited and reasonable restrictions are deemed necessary to protect our citizens from these harms.

HISTORY: Laws, 2014, ch. 497, § 2, eff from and after July 1, 2014.

§ 71-13-5. Prohibition against unlawfully intimidating business or employee or representative of a business to obtain something of value; prohibition against conspiring to disrupt lawful commerce in places of business.

(1) No person, organization, corporation, union, agency or other entity thereof shall:

(a) Damage, harm, injure or threaten to injure or coerce a business, or any employee or representative of the business with the intent to unlawfully intimidate the business or its employees from exercising their rights, which are protected by state and federal law, in an effort to obtain something of value for a public or private organization, corporation, union, agency or other entity, including, but not limited to, a neutrality agreement, card check agreement, collective bargaining recognition or other objective of an organized initiative;

(b) Restrict a business, a union, or the owners or employees of a business, from exercising their rights, which are protected under state and federal law, in an effort to obtain something of value for a public or private organization, corporation, union, agency or other entity.

(c) Conspire with another, for the purpose of disrupting lawful commerce in places of business, where such activity constitutes an assault or causes physical injury to any individual, located in or around the place of business.

(2) For purposes of this section, "something of value" includes, but is not limited to, a neutrality agreement, card check agreement, recognition or any other objective that is motivating such activities.

HISTORY: Laws, 2014, ch. 497, § 3, eff from and after July 1, 2014.

§ 71-13-7. Prohibition against intentionally or recklessly damaging business property of another under certain circumstances; aiding and abetting the intentional or reckless damaging of business property of another.

(1) No person, organization, corporation, union, agency or other entity shall intentionally or recklessly damage the business property of another when either of the following applies:

(a) The property is used by its owner or possessor in the owner's or possessor's profession, business, trade or occupation; or

(b) The person damages or otherwise marks the property owner's merchandise.

(2) Any person who organizes, coordinates, controls, supervises, finances, manages, aids or abets any of the activities prohibited by subsection (1) of this section shall be charged and suffer the same penalties as the person, organization, corporation, union, agency or other entity.

HISTORY: Laws, 2014, ch. 497, § 4, eff from and after July 1, 2014.

§ 71-13-9. Relation to First Amendment.

Nothing in the provisions of this chapter shall be construed to infringe and impede upon any individual's First Amendment rights.

HISTORY: Laws, 2014, ch. 497, § 5, eff from and after July 1, 2014.

§ 71-13-11. Award of damages in civil action under provisions of this chapter under certain circumstances.

In any civil action filed under the provisions of this chapter, the prevailing plaintiff shall be entitled to damages upon a showing that the conspiracy constitutes an assault or causes physical injury, as defined by law for such causes of action, to such plaintiff, in addition to any other damages otherwise authorized by law.

HISTORY: Laws, 2014, ch. 497, § 6, eff from and after July 1, 2014.

CHAPTER 15.

MISSISSIPPI EMPLOYMENT FAIRNESS ACT

Sec.
71-15-1. Short title.
71-15-3. Legislative findings.
71-15-5. Definitions.
71-15-7. State retains exclusive authority to regulate certain labor agreements; effect of violation of this section.
71-15-9. Authority to require employer or multiemployer association to enter into project labor agreement; relation to National Labor Relations Act.

§ 71-15-1. Short title.

This chapter shall be known and may be cited as the "Mississippi Employment Fairness Act."

HISTORY: Laws, 2014, ch. 499, § 1, eff from and after July 1, 2014.

§ 71-15-3. Legislative findings.

Employers and employees alike benefit from consistent and established standards regulating fair employment practices. There are existing federal and state laws, which seek to protect individuals from discrimination in employment, while also providing appropriate due process to employers without limiting the employer's ability to maintain a secure, safe and productive workplace, including, but not limited to, Title VII of the Civil Rights Act of 1964, the Age Discrimination in Employment Act, the Americans with Disabilities Act, the Equal Pay Act and the Genetic Information Nondiscrimination Act.

Mississippi is a right-to-work state and is governed by the right-to-work laws. Such laws are premised on the belief of free choice whereby employees have a right to freely decide whether to join, be represented by, or financially support a union or employee organization. A labor neutrality agreement is used as a tool to pressure company ownership and management to agree to union demands before the union approaches or involves affected employees, which is unfair to the employer as well as the employee or potential employee. This state recognizes that these agreements have become increasingly common in recent years. As a result of this increase, the need to regulate the use of such agreements is necessary to ensure that both the employer and employee are treated in the fairest way possible.

HISTORY: Laws, 2014, ch. 499, § 2, eff from and after July 1, 2014.

§ 71-15-5. Definitions.

For purposes of this chapter, the following words shall have the following meanings, unless the context clearly describes otherwise:

(a) "Employee" means a natural person who performs services for an employer for valuable consideration, and does not include a self-employed independent contractor.

(b) "Employer" means a person, association, or legal or commercial entity receiving services from an employee and, in return, giving compensation of any kind to such employee.

(c) "Discrimination" means when an employer takes an action or makes a distinction adversely affecting an employee or job applicant based on the group, class, or category to which that person belongs.

(d) "Federal labor laws" mean the National Labor Relations Act, compiled in 29 USCS, Section 151 et seq., and the Labor Management Relations Act, compiled in 29 USCS, Section 141 et seq., as amended, presidential executive orders, federal administrative regulations relating to labor and management or employee and employer issues, and the United States Constitution as amended.

(e) "Multiemployer association" means a bargaining unit composed of independent employers who associate together to negotiate jointly with one (1) or more labor organizations representing the employees of the independent employers within the bargaining unit.

(f) "Labor peace agreement" means an arrangement between a union and employer under which one (1) or both entities agree to waive certain rights under federal law with regard to union organizing and related activity.

(g) "Project labor agreement" means a collective bargaining agreement with one (1) or more labor unions that establishes the terms and conditions of employment for a specific construction project, before employees are hired to work on such project.

(h) "State," for the purposes of this chapter, means the Mississippi Legislature.

HISTORY: Laws, 2014, ch. 499, § 3, eff from and after July 1, 2014.

§ 71-15-7. State retains exclusive authority to regulate certain labor agreements; effect of violation of this section.

(1) The state shall retain the exclusive authority to require an employer or multiemployer association to accept or otherwise agree to any provisions of a labor peace agreement or any provisions that are mandatory or nonmandatory subjects of collective bargaining under federal labor laws, including, but not limited to, any limitations on an employer or multiemployer association's rights to engage in collective bargaining with a labor organization, to lock out employees, or to operate during a work stoppage; however, this subsection shall not invalidate or otherwise restrict the state from requiring the use of project labor agreements to the extent permissible under federal labor laws.

(2) This section shall be interpreted and enforced in a manner that is consistent with the National Labor Relations Act, compiled in 29 USCS, Section 151 et seq.

(3) Any agreement, contract, understanding or practice, written or oral, implied or expressed, between any employer and any labor organization containing requirements in violation of this section is declared to be unlawful, null and void, and of no legal effect.

(4) An employer or employee may seek injunctive relief in the Chancery Court of Hinds County, Mississippi, for violations of the provisions of this section.

HISTORY: Laws, 2014, ch. 499, § 4, eff from and after July 1, 2014.

§ 71-15-9. Authority to require employer or multiemployer association to enter into project labor agreement; relation to National Labor Relations Act.

(1) The state shall retain the exclusive authority to require an employer or multiemployer association to enter into a project labor agreement.

(2) This section does not prohibit an employer or any other person covered by the National Labor Relations Act compiled in 29 USCS, Section 131 from entering into agreements or engaging in any other activity protected by law. This section may not be interpreted to interfere with the labor relations of persons covered by the National Labor Relations Act.

(3) Relief that would interfere with the labor relations of persons covered by the National Labor Relations Act may not be granted under the provisions of this section.

HISTORY: Laws, 2014, ch. 499, § 5, eff from and after July 1, 2014.